



# California Regulatory Notice Register

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AUGUST 16, 2002

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***Time-  
Dated  
Material***

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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## PROPOSED ACTION ON REGULATIONS

*Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.*

### TITLE 2. STATE ALLOCATION BOARD

#### NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES  
TO AMEND, ADOPT, AND REPEAL  
REGULATION SECTIONS, TITLE 2,  
CALIFORNIA CODE OF REGULATIONS,  
RELATING TO THE DEFERRED  
MAINTENANCE PROGRAM

PROPOSED AMENDMENTS TO REGULATION  
SECTIONS: 1866, 1866.1, 1866.2, 1866.3, 1866.4,  
1866.5, 1866.5.3, 1866.7, 1866.8, 1866.9, AND  
1866.10

REGULATION SECTIONS PROPOSED FOR  
ADOPTION: 1866.4.1, 1866.4.2, 1866.4.3, 1866.4.4,  
1866.4.6, 1866.4.7, 1866.5.1, 1866.5.2, 1866.5.4,  
1866.5.5, 1866.5.6, 1866.5.7, 1866.5.8, 1866.5.9,  
1866.9.1, 1866.12, 1866.13, AND 1866.14

REGULATION SECTIONS PROPOSED FOR  
REPEAL: 1866.4.5 AND 1866.6

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend, adopt, and repeal the above-referenced regulation sections, as well as adopt the above-referenced forms contained in Title 2, California Code of Regulations (CCR). A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

#### AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend, adopt, and repeal these regulations under the authority provided by Section 15503 of the Government Code and Section 17588 of the Education Code. The proposal interprets

and makes specific reference to Sections 2553, 17070.75, 17280, and 17582 through 17592.5 of the Education Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The enactment of new laws and operation needs of the program have created dramatic changes in the Deferred Maintenance Program (DMP). As a result, the current regulations that govern the DMP are in some cases obsolete and inconsistent pursuant to newly enacted laws.

Existing Regulation Section 1866 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments provide additional specific words and terms essential to these regulations.

Existing Regulation 1866.1 outlines the prerequisites to receiving an apportionment under the DMP. The proposed amendments further define the criteria to receive an apportionment under the DMP, as well as define the entities that may apply for DMP funding.

Existing Regulation Section 1866.2 provides direction to school districts seeking an apportionment under the DMP. The proposed amendment establishes the application process for receiving a DMP Basic Grant.

Existing Regulation Section 1866.3 specifies the process for filing and reviewing DMP applications. The proposed amendment establishes the application process for receiving a DMP Extreme Hardship Grant.

Existing Regulation Section 1866.4 establishes the necessity for a district to file a five year plan of maintenance needs. The proposed amendments establish the purpose for which the *Five Year Plan*, Form SAB 40-20, is filed and explains application acceptance guidelines.

Proposed adoption of Regulation Section 1866.4.1 provides specific criteria pertaining to what type of projects may be included on a five year plan and explains the uses of the Basic Grant apportionment.

Proposed adoption of Regulation Section 1866.4.2 provides for the calculation of the Basic Grant apportionment and defines a prorated basic grant apportionment.

Proposed adoption of Regulation Section 1866.4.3 defines the type of revenue a district may utilize in order to deposit its matching share contribution.

Proposed adoption of Regulation Section 1866.4.4 provides a mechanism for utilizing funds deposited but unmatched by the State. It explains how a district can obtain the use of these deposited funds for the next fiscal year.

Existing Regulation Section 1866.4.5 specifies the funding limitations for County Superintendents of Schools. The proposed amendment deletes this section, as it was appropriate to relocate it elsewhere in these regulations.

Proposed adoption of Regulation Section 1866.4.6 specifies to County Superintendents of Schools the timeframe for the release of State funds and the process if timeframe is not met.

Proposed adoption of Regulation Section 1866.4.7 provides a process if a district does not deposit the maximum amount of matching funds.

Existing Regulation Section 1866.5 allows a district to apply for funding for multiple critical hardship projects. The proposed amendments provide eligibility criteria for districts to obtain extreme hardship grants.

Proposed adoption of Regulation Section 1866.5.1 explains what documents are required for submittal in order for the OPSC to accept Extreme Hardship Grant applications.

Proposed adoption of Regulation Section 1866.5.2 explains how the Extreme Hardship Grant is determined for the first critical hardship project and multiple critical hardship projects.

Existing Regulation Section 1866.5.3 assigns priorities to critical hardship projects when funding is insufficient to fully fund all critical hardship requests. The proposed amendments redefine what constitutes a priority one critical hardship project, and specifies the necessary language to be included in a district's governing board resolution when requesting priority one status. In addition, this section incorporates a process for projects placed and funded from the unfunded list.

Proposed adoption of Regulation Section 1866.5.4 sets forth the process for reimbursement of expenditures and requires OPSC approval of the project prior to incurring construction costs.

Proposed adoption of Regulation Section 1866.5.5 explains the uses of the Extreme Hardship Grant apportionment.

Proposed adoption of Regulation Section 1866.5.6 specifies the conditions in which school districts may receive an increase in funding for ongoing project costs.

Proposed adoption of Regulation Section 1866.5.7 provides direction to school districts regarding the release of funds.

Proposed adoption of Regulation Section 1866.5.8 establishes the criteria for ensuring project completion or progress on the project for districts that have received extreme hardship grant apportionments.

Proposed adoption of Regulation Section 1866.5.9 specifies that an exemption will be provided when determining a district's contribution if the removal of an underground toxic tank cannot be funded by any other source.

Existing Regulation Section 1866.6 provides a process for payment of the apportionment. The proposed amendment repeals this section as this process is no longer valid.

Existing Regulation Section 1866.7 specifies the role of a district's governing board once funds have been apportioned and deposited in the deferred maintenance fund of the district. The proposed amendments are non-substantive in nature and do not change the intent of the section.

Existing Regulation Section 1866.8 specifies that expenditures shall be subject to competitive bidding. The proposed amendments further clarify that the expenditures made by a district must be in compliance with the Public Contract Code, and provide specificity with regard to awarding emergency contracts.

Existing Regulation Section 1866.9 specifies that projects that have received apportionments shall be in compliance with all laws, ordinances, and regulations. The proposed amendment deletes the existing language. The new language provides direction to school districts that have received funding and specifies a timeline to submit an expenditure report after funds have been released.

Proposed adoption of Regulation Section 1866.9.1 provides for an expenditure audit process and specifies a timeframe when the audit will commence and be completed. In addition, districts are put on notice to maintain all supporting documentation pertaining to all costs associated with the extreme hardship grant apportionment expenditures.

The proposed amendments to existing Regulation Section 1866.10 renumber the reference sections to the correct Education Code sections.

Proposed adoption of Regulation Section 1866.12 explains the conditions of how earned interest on DMP grant funds will be treated.

Proposed adoption of Regulation Section 1866.13 stipulates that work listed on the *Five Year Plan* that has been submitted and funded under the School Facility Program (SFP) or the Federal Renovation Program shall be removed from said plan and the district shall submit a revised *Five Year Plan*.

Proposed adoption of Regulation Section 1866.14 specifies that funding applications may not be amended to increase the scope of a project. This concept is current practice under the SFP and ensures equity to all project applications submitted or not yet filed and does not disadvantage projects on the DMP workload list.

**DOCUMENTS INCORPORATED  
BY REFERENCE**

1. Five Year Plan, Form SAB 40-20 (New 04/02)
2. Certification of Deposits, Form SAB 40-21 (New 04/02)
3. Extreme Hardship Funding Application, Form SAB 40-22 (New 04/02)
4. Fund Release Authorization, Form SAB 40-23 (New 04/02)
5. Expenditure Report, Form SAB 40-24 (New 04/02)

These forms are too cumbersome or impractical to publish in Title 2 of the CCR. Therefore, it is proposed to incorporate the forms by reference. Copies of these forms are available for review during normal business hours at the OPSC located at 1130 K Street, Suite 400, Sacramento, CA 95814. They are also available on the Internet at: <http://www.opsc.dgs.ca.gov>.

**IMPACT ON LOCAL AGENCIES OR  
SCHOOL DISTRICTS**

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the state pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.

**ECONOMIC IMPACT**

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact on businesses or private persons that might result from the proposed regulatory action and the following determinations have been made relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- There will be no impact on the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.

- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- There are no costs or savings to any State agency.
- The SAB has made an initial determination that there will be no impact on housing costs.

**EFFECT ON SMALL BUSINESSES**

It has been determined that the adoption of the regulation sections will not affect small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. These regulations only apply to school districts for purposes of funding school facility projects.

**SUBMISSION OF COMMENTS, DOCUMENTS  
AND ADDITIONAL INFORMATION**

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax, must be received at the OPSC no later than September 30, 2002 at 5:00 p.m. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Lisa Jones  
Regulations Coordinator

Mailing Address: Office of Public School  
Construction  
1130 K Street, Suite 400  
Sacramento, CA 95814

E-mail Address: [lisa.jones@dgs.ca.gov](mailto:lisa.jones@dgs.ca.gov)

Fax No.: (916) 445-5526

**AGENCY CONTACT PERSONS**

Questions regarding this Notice of Proposed Regulatory Action may be directed to Lisa Jones at (916) 322-1043. If Ms. Jones is unavailable, questions may be directed to the backup contact person, Dennis Boydston, at (916) 322-0327.

**ADOPTION OF REGULATIONS**

Please note that, following the public comment period the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity.



If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulation should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

#### **SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE**

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

#### **RULEMAKING FILE**

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~/underline.
2. A copy of this notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.opsc.dgs.ca.gov> under "Regulations," then click on "Proposed Regulations."

#### **ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SAB would be more effective in carrying out the purpose of which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the Web site listed above.

### **TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE**

On February 4, 2002, the Department of Food and Agriculture adopted emergency regulations (File #01-0424-07E) pertaining to Direct Marketing. Effective on July 3, 2002, the previously filed emergency regulations were readopted under emergency regulations (File #02-0701-03EE) by the Department without any changes to the text from the original emergency regulations. Re-adoption was necessary because of a material procedural error in the Certificate of Compliance (File #02-0521-03C) and requires that a new notice of regulatory action with another 45-day comment period be submitted. The Department now proposes to permanently adopt the emergency regulations.

**NOTICE IS HEREBY GIVEN** that the Department of Food and Agriculture proposes to amend Sections 1392.1, 1392.2, 1392.4 and 1392.9.1 of the regulations in Title 3 of the California Code of Regulations.

Notice is also given of a new written public comment period. Any interested person may present statements or arguments in writing relevant to the proposed regulation until 5:00 p.m. on September 30, 2002. All comments that were submitted during the previous 45-day comment period will be included in the new rulemaking record; therefore, it is unnecessary to resubmit comments. Please refer to the contact section of this notice for the contact persons and address information when submitting comments.

A public hearing is not scheduled but will be if any interested person, or his or her duly authorized representative, submits a written request for public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing (if one is requested) or following the written comment period (if no public hearing is requested), the Department of Food and Agriculture, at its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth above without further notice.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Section 1392.1(d) references labeling requirements in Section 1392.4(f), which is deleted in this proposal.

Section 1392.2 clarifies the definitions for producer and certified producer's certificate, and also proposes a definition for partnerships.

Section 1392.4(f) limits the number of certified producers that may sell for, or be represented by, two other certified producers and also sets specific conditions under which a certified producer may sell. Prior to adopting the emergency regulation, the law did not limit the number of partnerships permitted on a certified producer's certificate, which may represent, or be represented by, other partnerships or entities. This proposal amends this section to equally place the same limitations and requirements on partnerships and certified producers in order to maintain a fair and competitive marketplace.

This proposal will provide certified producers whose certificate has been issued prior to the adoption of this regulation a time frame in which to comply with the new law.

Section 1392.9.1 sets requirement for partnerships, which would require persons applying for a certified producer's certificate under a partnership to provide the county agricultural commissioner with the partnership's federal tax identification number. This proposal will require that properties farmed by a partnership or similar contractual agreement are under exclusive control of the partnership, and are considered a separate entity from its individual members.

#### **FISCAL IMPACT STATEMENTS**

The Department has initially determined that these proposed regulations will have no effect on savings or increased costs to any State agency, no costs under "Part 7 (commencing with Section 17500) of Division 4" of the Government Code to local agencies or school districts requiring reimbursement, no other nondiscretionary costs or savings imposed on local agencies, and no costs or savings in federal funding to the State will result from these proposed regulations. The Department has also initially determined that the proposed regulation does not impose a mandate on local agencies or school districts.

#### **EFFECT ON SMALL BUSINESS**

The Department has initially determined that these proposed regulations may have an effect on small businesses. The Department is not aware that the proposed change in the regulations would result in added cost on small business affected by these proposed changes and would have a positive effect on such business. This is based on the fact that the Department does not have documents to rely upon to make the determination of the number of small businesses the proposed changes would affect.

#### **EFFECT ON HOUSING COSTS**

The Department has initially determined that the amendment of the proposed regulation will have no effect on housing costs.

#### **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The Department has initially determined that the proposed changes will have no significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

#### **ASSESSMENT STATEMENT**

The Department has initially determined that the proposed changes in the regulations would affect the creation of jobs in California but would not create new or eliminate or expand existing businesses in California.

#### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

The Department is not aware of a cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **ALTERNATIVES**

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

#### **AUTHORITY AND REFERENCE**

Notice is hereby given that the Department of Food and Agriculture, pursuant to the authority vested by Sections 407, 42681, 42682, 42684, 47000, 47001, 47002, 47003 and 47004 of the Food and Agricultural Code, and to implement, interpret, or make specific Section 42941, 47000, 47001, 47002, 47003 and 47004 of the Food and Agricultural Code, proposes to amend regulations in Title 3 of the California Code of Regulations.

#### **CONTACT**

Inquiries concerning the proposed administrative action may be directed to Sonja Dame. Inquiries pertaining to the substance of the proposed regulation may be directed to Janice L. Price. The contact persons may be reached at the Department of Food and Agriculture, 1220 N Street, Room A-447, Sacramento,

CA 95814, phone number (916) 654-0919, fax number (916) 654-0666. Comments may also be submitted via e-mail at [jprice@cdfa.ca.gov](mailto:jprice@cdfa.ca.gov).

**AVAILABILITY OF STATEMENT OF REASONS  
AND TEXT OF PROPOSED REGULATIONS**

A complete copy of existing regulations, the proposed changes, and the Initial Statement of Reasons may be obtained upon request from the Department of Food and Agriculture. These documents are available on our website at [www.cdfa.ca.gov/cdfa/regs](http://www.cdfa.ca.gov/cdfa/regs).

In addition, all information, including reports, documentation, and other materials (rulemaking file) related to the proposed action is available upon request from the agency contact persons named in this notice. The Final Statement of Reasons, when available, may also be obtained from the contact persons named in this notice. The text of the proposed regulations with any sufficiently related changes clearly indicated will be made available for 15 days prior to adoption.

**TITLE 5. EDUCATION AUDITS  
APPEAL PANEL**

[Notice published August 16, 2002]

**NOTICE OF PROPOSED RULEMAKING**

The Education Audits Appeal Panel ("Panel") proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

**PROPOSED REGULATORY ACTION**

The Panel proposes to adopt Sections 19801–19811 in Title V, Division 1, Chapter 24 of the California Code of Regulations. These sections concern the operating procedures for the Panel.

**PUBLIC HEARING**

The Panel will hold a public hearing starting at 1:30 p.m. on September 30, 2002, at the Redwood Room located at Capitol Place, 915 L Street, Sacramento, California. The Redwood Room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Panel requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the board. The written comment period closes at 5:00 p.m. on

September 30, 2002. The Panel will consider only comments received at the Panel offices by that time. Submit comments to:

Jeff Bell, Clerk  
Education Audits Appeal Panel  
915 L Street, #C419  
Sacramento, CA 95814

**AUTHORITY AND REFERENCE**

Education Code Section 41344 (d) establishes a panel consisting of the Superintendent of Public Instruction, the Director of Finance, and a Chief Administrative Officer of the Fiscal Crisis and Management Assistance Team. This panel is called the Education Audits Appeal Panel, and the regulations proposed in this announcement are designed to regulate the activities of the Panel. This code section serves as both the authority and as the reference for the creation of the proposed regulations.

**INFORMATIVE DIGEST**

Education Code Section 41344 was adopted as part of the 1999–2000 education trailer bill (AB 1115, Chapter 78, Statutes of 1999, Section 24, effective July 7, 1999). This code section requires the Superintendent of Public Instruction and the Director of the Department of Finance to develop a repayment plan for local education agencies that are required to repay an apportionment significant audit exception as a result of an audit or review. This code section also allows the local education agency to file an appeal of a finding in an audit report, within 60 days of the date on which the local education agency received a copy of the final audit report, to the Education Audits Appeal Panel described above.

Proposed Section 19801 defines terms for the purposes of the regulation.

Proposed Section 19802 specifies how to file an appeal with the Panel, the contents of and process for filing a Notice of Appeal, and the procedures for withdrawal of an appeal.

Proposed Section 19803 provides for the designation of and address for the Panel. The Panel is administratively supported by its constituent members' agencies.

Proposed Section 19804 clarifies the time for filing a Notice of Appeal. This section also clarifies how the time to file a Notice of Appeal is determined for audits conducted by the State Controller's Office, other governmental agencies and certified public accountants.

Proposed Section 19805 defines how appeals are processed, including a description of the duties of the Panel Clerk and the timelines associated with processing an appeal.



Proposed Section 19806 specifies how state agencies and other entities participate as parties in the appeal process.

Proposed Section 19807 specifies the burden of proof in appeals and provides for the introduction of the final audit report in evidence.

Proposed Section 19808 specifies the procedures for continuances during the consideration of requests for waivers under Education Code section 41609, and the procedure following a grant of a waiver.

Proposed Section 19809 specifies the process by which a local education agency may request an informal hearing be conducted under the procedures of Article 10 (commencing with Government Code section 11445.10) of Chapter 4.5 of the Administrative Procedures Act.

Proposed Section 19810 specifies the procedures for alternative dispute resolution pursuant to the Administrative Procedures Act and the regulations of the Office of Administrative Hearings.

Proposed Section 19811 specifies the chairperson's role in setting meetings and agendas, quorum requirements, and decisions are by majority vote.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

*The Panel has made the following determinations:*

Mandate on local agencies and school district: None.

Cost or savings to any state agency: Department of Finance has estimated that these proposed regulations could result in costs that are not quantifiable on an annual basis, but could potentially be in the millions of dollars. In addition, the Department of Finance has estimated that these proposed regulations could result in the need for additional positions at a cost of \$100,000 per year per position. (See attached DOF letter).

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. Due to the nature of the proposed regulations, and the fact that they are designed to provide a method by which school districts may appeal audit decisions, they are not anticipated to result in any statewide adverse economic impact directly affecting business.

The Education Audits Appeal Panel is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

(1) create new businesses or eliminate existing businesses within California; or

(2) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

#### PLAIN ENGLISH DETERMINATION AND OVERVIEW

##### *Small Business Determination*

The Panel has determined that the proposed regulations do not affect small business, since they are proposed to provide a method by which school districts may appeal audit decisions, and since school districts are not small businesses, they are not anticipated to result in any statewide adverse economic impact directly affecting small businesses.

##### *Plain English Policy Overview*

The purpose of the proposed regulations is to establish in regulations the operating procedures for the Education Audits Appeal Panel that has been established pursuant to Education Code section 41344.

##### *Availability of Text in Plain English*

The text of the proposed regulations is available in plain English from Jeff Bell, Clerk to the Panel, listed below as the Contact Person. The text can also be found on the Education Audits Appeal Panel website, at [www.eaap.ca.gov](http://www.eaap.ca.gov).

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Panel must determine that no alternative it considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Panel invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

#### CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Jeff Bell, Clerk  
Education Audits Appeal Panel  
915 L Street, C#419  
Sacramento, CA 95815  
Telephone: (916) 445-0328  
E-mail: [Jeff.Bell@dof.ca.gov](mailto:Jeff.Bell@dof.ca.gov)

Please also direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to this address.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Panel will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office on the 7<sup>th</sup> Floor at the 915 L Street address listed above. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting the Clerk at the address, phone number, or e-mail address listed above. Once the final statement of reasons has been prepared pursuant to Government Code Section 11346.9, it shall also be made available for inspection and copying at the address provided above, and copies of it may be obtained by contacting the Clerk at the address, phone number or e-mail address listed above.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Panel may adopt the proposed regulations substantially as described in this notice. If the Panel makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Panel adopts the regulations as revised. Please send requests for copies of any modified regulations to the Clerk at the address indicated above. The Panel will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### TITLE 10. DEPARTMENT OF INSURANCE

STATE OF CALIFORNIA  
45 Fremont Street, 21st Floor  
San Francisco, California 94105

#### NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

**File No. RH 2022520**

Notice Date: August 1, 2002

Proposed Revisions to the Insurance Commissioner’s Regulations pertaining to the Classification of Risks; Recording and Reporting of Data; Statistical

Reporting and Experience Rating; and Approval of Advisory Pure Premium Rates to be effective January 1, 2003.

#### SUBJECT OF HEARING

Notice is hereby given that the insurance commissioner will hold a public hearing to consider (1) the approval of advisory pure premium rates developed by the designated rating organization; (2) amendments to the California Workers’ Compensation Uniform Statistical Reporting Plan—1995; (3) amendments to the Miscellaneous Regulations for the Recording and Reporting of Data; and (4) amendments to the California Workers’ Compensation Experience Rating Plan—1995. The hearing will be held in response to a filing, submitted on July 31, 2002, by the Workers’ Compensation Insurance Rating Bureau of California (“WCIRB”).

#### AUTHORITY AND REFERENCE

##### Uniform Plans and Regulations

The workers’ compensation classification of risks and statistical reporting rules are set forth in Title 10, California Code of Regulations, Section 2318.6. The miscellaneous regulations for the recording and reporting of data are set forth in Title 10, California Code of Regulations, Section 2354. The workers’ compensation experience rating regulations are set forth in Title 10, California Code of Regulations, Section 2353.1. The regulations were promulgated by the insurance commissioner pursuant to the authority granted by Insurance Code Section 11734.

##### Pure Premium Rates

Pursuant to Insurance Code Section 11750.3, a rating organization is permitted to develop pure premium rates for submission to the insurance commissioner for issuance or approval. The Insurance Code provisions regarding State rate supervision operative January 1, 1995 do not authorize the insurance commissioner to require insurers to use the pure premium rates submitted by the designated rating organization and issued or approved by the insurance commissioner. Accordingly, the pure premium rates issued or approved by the insurance commissioner are advisory only.

##### Advisory Rating Plans

Pursuant to Insurance Code Sections 11750.3(a) and 11750.3(c), a licensed rating organization may promulgate advisory plans in connection with pure premium rates and the administration of classification and rating systems and present them to the insurance commissioner for review.

#### HEARING DATE AND LOCATION

A public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the matters proposed in the WCIRB's filing, at the following date, time and place:

**September 20, 2002—9:30AM**  
**Training Room 1 & 2**  
**455 Golden Gate Avenue**  
**San Francisco, California 94102**

#### INFORMATIVE DIGEST

Pursuant to Insurance Code Sections 11734 and 11751.5, the insurance commissioner has designated the WCIRB as his rating organization and statistical agent. As the designated rating organization and statistical agent, the WCIRB has developed and submitted for the insurance commissioner's approval pure premium rates and revisions to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan—1995. The pure premium rates will be advisory only; however, adherence to the regulations contained in the California Workers' Compensation Uniform Statistical Reporting Plan—1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan—1995 is mandatory. With regard to the standard classification system developed by the designated rating organization and approved by the insurance commissioner, Insurance Code Section 11734 provides that an insurer may develop its own classification system if it is filed with the insurance commissioner 30 days prior to its use and is not disapproved by the insurance commissioner for failure to demonstrate that the data produced by the insurer's classification system can be reported consistently with the uniform statistical reporting plan or the classification system developed by the WCIRB and approved by the insurance commissioner.

The pure premium rates and revisions to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, which contains the standard classification system developed by the WCIRB, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan—1995, are detailed in the WCIRB's filing letter and summarized below.

#### APPROVE PURE PREMIUM RATES

Pursuant to California Insurance Code Section 11750.3, the WCIRB has proposed advisory pure premium rates for approval by the insurance commis-

sioner applicable to (a) new and renewal policies with anniversary rating dates on or after January 1, 2003, (b) the unexpired portion of outstanding policies with anniversary rating dates on or after January 1, 2002 and before July 1, 2002, as of January 1, 2003, and (c) the unexpired portion of outstanding policies with anniversary rating dates on or after July 1, 2002 and before January 1, 2003, as of January 1, 2003. The proposed advisory pure premium rates for new and renewal policies with anniversary rating dates on or after January 1, 2002 are, on average, 11.9% greater than the July 1, 2002 advisory pure premium rates approved by the insurance commissioner. The advisory pure premium rates applicable to the unexpired portion of outstanding policies with anniversary rating dates on or after January 1, 2002 and before July 1, 2002, as of January 1, 2003, are 5.9% greater than the January 1, 2002 advisory pure premium rates approved by the insurance commissioner. The advisory pure premium rates applicable to the unexpired portion of outstanding policies with anniversary rating dates on or after July 1, 2002 and before January 1, 2003, as of January 1, 2003, are 5.9% greater than the July 1, 2002 advisory pure premium rates approved by the insurance commissioner.

The proposed pure premium rates applicable to 2003 policies are based on (a) insurer losses incurred during 2001 and prior accident years valued as of March 31, 2002, (b) insurer loss adjustment expenses for 2001 and prior years, (c) the cost impact of AB 749, (d) the experience rating off-balance correction factor, and (e) classification payroll and loss experience reported for policies issued during 1999 and prior years. The proposed pure premium rates applicable to the unexpired portion of 2002 policies as of January 1, 2003 are based on the cost impact of AB 749.

#### AMEND THE CALIFORNIA WORKERS' COMPENSATION UNIFORM STATISTICAL REPORTING PLAN—1995

The WCIRB recommends the following revisions to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, which includes the standard classification system and unit statistical reporting requirements, as well as policy document filing requirements and general administrative procedures. Except as noted below, these changes are proposed to become effective January 1, 2003 with respect to new and renewal policies with anniversary rating dates on or after January 1, 2003. The changes to Part 4, "Unit Statistical Report Filings," are proposed to be applicable to all unit statistical reports with a date of valuation, and all correction reports filed, on or after July 1, 2003.



- Amend for clarity, consistency and ease of use.
- Amend the minimum and maximum annual payroll for executive officers, partners, and sole proprietors to increase the maximum from \$76,700 to \$79,300, and the minimum from the \$27,300 to \$28,600, as well as to other payroll limitations relevant to specific classifications (e.g. athletic teams, entertainment classifications, taxicabs, etc.), to reflect wage inflation since the last time the amount was adjusted.
- Amend the painting and electrical wiring dual wage construction classifications by \$1 to reflect wage inflation since the last time the thresholds were amended.
- Amend to add a new classification for sandwich shops, beverage preparation shops and ice cream or frozen yogurt shops.
- Amend the overtime remuneration provisions with respect to employees that are paid on a commission or piecework basis and to reference the special industry classification for farms.
- Amend to clarify the intent of the classifications for private colleges or schools.
- Amend to require unit statistical reports with valuation dates on or after July 1, 2003 to be submitted to the WCIRB using the Expanded ASWG format.

#### **AMEND MISCELLANEOUS REGULATIONS FOR THE RECORDING AND REPORTING OF DATA**

The WCIRB recommends the following revisions to the Miscellaneous Regulations for the Recording and Reporting of Data to become effective January 1, 2003 with respect to new and renewal policies with anniversary rating dates on or after January 1, 2003:

- Amend for clarity, consistency and ease of use, and to conform to proposed changes to the Uniform Statistical Reporting Plan.

#### **AMEND CALIFORNIA WORKERS' COMPENSATION EXPERIENCE RATING PLAN—1995**

The WCIRB recommends the following revisions to the California Workers' Compensation Experience Rating Plan—1995 to become effective January 1, 2003 with respect to new and renewal policies with anniversary rating dates on or after January 1, 2003:

- Amend the expected loss rates, D-ratios and the average death value effective January 1, 2003 to reflect more current experience.
- Amend the Experience Rating Eligibility from \$26,200 to \$33,600 to reflect wage inflation, the

July 1, 2002 pure premium rate change and the proposed January 1, 2003 pure premium rate change.

- Amend for consistency with changes being proposed to the Uniform Statistical Reporting Plan.

#### **UNITED STATES LONGSHORE AND HARBOR WORKERS' SUPPLEMENT**

The WCIRB has adopted the following revisions to the United States Longshore and Harbor Workers' Supplement of the California Workers' Compensation Uniform Statistical Reporting Plan—1995. The changes will become effective January 1, 2003, except that the instructions applicable to the reporting of USL&H experience will be applicable to all policies with effective dates on or after January 1, 2002:

- Amend for clarity, consistency and ease of use, and to conform to changes made to the Uniform Statistical Reporting Plan.

#### **COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS**

The insurance commissioner has determined that there will not be a cost increase and there will not be any new programs mandated on any local agency or school district as a result of the proposed regulations, if adopted as proposed herein.

#### **IMPACT ON HOUSING COSTS**

The insurance commissioner has determined that the proposed regulations will not have a significant effect on housing costs.

#### **IMPACT ON SMALL BUSINESSES**

The insurance commissioner has determined that the proposed regulations will not have a significant effect on small businesses.

#### **COST IMPACT ON PRIVATE PERSONS OR ENTITIES**

The insurance commissioner must determine the potential cost impact of the proposed regulations on private persons or businesses directly affected by the proposal. At this time, the insurance commissioner expects that the proposed regulations will not have a significant effect on private persons or entities.

#### **FEDERAL FUNDING TO THE STATE**

The matters proposed herein will not affect any federal funding.

#### **NON-DISCRETIONARY COSTS OR SAVINGS**

The proposed regulations will not impose any non-discretionary costs or savings to local agencies.



**COST OR SAVINGS TO STATE AGENCIES**

The matters proposed herein will not result in any cost or savings to State agencies, except for the State Compensation Insurance Fund.

**REIMBURSABLE COSTS**

There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

**COMPARABLE FEDERAL LAW**

There are no existing federal regulations or statutes comparable to the proposed regulations.

**ACCESS TO HEARING ROOMS**

The facility to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make special arrangements, if necessary.

**PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS**

All persons are invited to submit written comments to the insurance commissioner prior to the public hearing on the proposed amendments contained in the WCIRB's filing. Such comments should be addressed to:

California Department of Insurance  
Attention: Larry C. White, Senior Staff Counsel  
45 Fremont Street, 24th Floor  
San Francisco, California 94105  
(415) 538-4423

Any interested person may present oral and/or written testimony at the scheduled public hearing. Written comments and oral testimony will be given equal weight in the insurance commissioner's deliberations.

**DEADLINE FOR WRITTEN COMMENTS**

All written material, unless submitted at the hearing, must be received by the insurance commissioner at the address listed above no later than 5:00 PM on September 24, 2002.

**TEXT OF REGULATIONS AND STATEMENT OF REASONS AVAILABLE**

The insurance commissioner has prepared an Initial Statement of Reasons for the proposed regulations, in addition to the informative digest included in this Notice of Proposed Action and Notice of Public Hearing. The express terms of the proposed regulations as contained in the WCIRB's filing, the Notice of Proposed Action and Notice of Public Hearing and the Initial Statement of Reasons will be made available for inspection or provided without charge upon written

request to the contact person for these hearings (listed above). The filing may also be accessed on the WCIRB's website at [www.wcirbonline.org](http://www.wcirbonline.org) in the "WCIRB Wire" section, August 1, 2002 dateline.

**ACCESS TO RULE MAKING FILE, CONTACT**

Any interested person may inspect a copy of or direct questions about the proposed regulations or other matters relative to this filing, the statement of reasons thereof, and any supplemental information contained in the rule-making file upon application to the contact person (listed above). The rule-making file will be available for inspection at 45 Fremont Street, 22nd Floor, San Francisco, California 94105, between the hours of 9:00 AM and 4:30 PM, Monday through Friday.

**AUTOMATIC MAILING**

A copy of this Notice, including the informative digest that contains the general substance of the proposed regulations, automatically will be sent to all persons on the insurance commissioner's Bulletins and Rulings, and California Government Code mailing lists.

**ADOPTION OF REGULATIONS**

Following the hearing, the insurance commissioner may adopt or approve regulations substantially as described in this Notice and informative digest or he may adopt or approve modified regulations. He also may refuse to adopt or approve the regulations. Notice of the insurance commissioner's action will be sent to all persons on the insurance commissioner's Bulletins and Rulings mailing list and to those persons who have otherwise requested notice of the commissioner's action.

**TITLE 22. DEPARTMENT OF TOXIC SUBSTANCES CONTROL****45-DAY PUBLIC NOTICE AND COMMENT PERIOD****PROPOSED REGULATIONS****ELECTRONIC HAZARDOUS WASTE REGULATIONS****DEPARTMENT REFERENCE NUMBER: R-01-06**

**NOTICE IS HEREBY GIVEN** that the Department of Toxic Substances Control (DTSC) proposes to amend California Code of Regulations, title 22, division 4.5<sup>1</sup>, chapter 23 to include the management

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<sup>1</sup> For purposes of this 45-day Public Notice, all regulatory references are to the California Code of Regulations, title 22, division 4.5 unless otherwise indicated.

of cathode ray tube (CRT) materials and consumer electronic devices (CEDs) under the universal waste regulations contained within that chapter found at section 66273.1 et seq. (commonly referred to as the Universal Waste Rule). These proposed regulations would amend the following sections within chapter 23: 66273.1, 66273.4, 66273.8, 66273.9, 66273.13, 66273.14, 66273.20, 66273.33, 66273.34, 66273.40 and 66273.60. These sections are amended to add CEDs to the existing Universal Waste Rule. Two sections will be added to chapter 23, sections 66273.3 and 66273.6, which will establish at what point in the generation process CRT materials and CEDs come under regulation as universal waste, respectively. A new article would be added as article 7, chapter 23, which will establish the management standards for CRT materials only. A petition process for adding new waste to the Universal Waste Rule is proposed by the addition of new sections to chapter 10, sections 66260.22 and 66260.23. These proposed regulations would also amend section 66260.10 of Chapter 10, section 66261.9 of chapter 11, section 66264.1 of Chapter 14, section 66265.1 of Chapter 15, section 66268.1 of Chapter 18, and section 66270.1 of Chapter 20.

Health and Safety Code section 25150.6(f) states that DTSC may develop regulations that exempt a hazardous waste management activity for the types of hazardous waste listed within this section of statute. "Electronic hazardous wastes" are one of the waste types listed under Health and Safety Code section 25150.6. This section of statute further states that DTSC may define by regulations the types of materials that are considered "electronic hazardous wastes." Under this provision of law, CRT materials and CEDs are being defined as "electronic hazardous wastes" in this proposed rulemaking.

Note that wastes proposed to be managed as universal waste must first be evaluated to determine whether they exhibit a hazardous waste characteristic. Only those wastes that exhibit a characteristic of hazardous waste are regulated under the proposed standards of this rulemaking (i.e., only *hazardous waste* CRT materials and *hazardous waste* CEDs will be regulated). CRT materials and CEDs are generated by a large number of persons, public agencies and businesses, but these wastes are generated in very small quantities by those entities. For these reasons, CRT materials and CEDs are appropriate wastes to be managed under the State's existing universal waste regulations.

#### PUBLIC HEARING AND WRITTEN COMMENT PERIOD

DTSC will hold a public hearing on the proposed regulations at **10:00 a.m. on September 30, 2002**, in the Sierra Hearing Room, 2nd floor, 1001 "I" Street,

Sacramento, California, at which time any person may present statements or arguments orally or in writing, relevant to this proposal. Please submit written comments to the contact person listed at the end of this notice. Written comments submitted no later than 5:00 p.m. on September 30, 2002 will be considered.

Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register prior to the hearing. Pre-hearing registration will be conducted at the location of the hearing from 8:30 a.m. to 9:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded an opportunity after the registered persons have been heard.

If you will require accommodations for the hearing impaired, please contact DTSC at the address and phone number provided at this end of this Public Notice.

#### AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities:

Health and Safety Code section 25141. This section directs DTSC to adopt, by regulation, criteria and guidelines for the identification of hazardous wastes.

Health and Safety Code section 25150. This section authorizes DTSC to establish standards for classifying and managing hazardous wastes.

Health and Safety Code section 25150.6. This section allows DTSC to designate a waste as a universal waste, which is thus exempt from certain hazardous waste management activities.

Health and Safety Code section 25159. This section grants DTSC authority to adopt regulations allowing the State to maintain authorization to administer a State hazardous waste program in lieu of the federal program under the Resource Conservation and Recovery Act.

Health and Safety Code section 58012. This section grants DTSC authority to adopt regulations to execute its duties.

These regulations implement, interpret, or make specific the following:

Health and Safety Code section 25141. This section directs DTSC to adopt, by regulation, criteria and guidelines for the identification of hazardous wastes.

Health and Safety Code section 25150. This section authorizes DTSC to establish standards for classifying and managing hazardous wastes.

Health and Safety Code section 25159. This section grants DTSC authority to adopt regulations allowing the State to maintain authorization to administer

a State hazardous waste program in lieu of the federal program under the Resource Conservation and Recovery Act.

Health and Safety Code section 25159.5. This section directs DTSC to conform State regulations to the federal regulations for consistency with protecting human health and the environment.

Government Code section 11340.6. This section allows any person to petition a State agency to adopt, amend, or repeal a regulation.

Government Code section 11340.7. This section outlines the petition review process that a state agency must use for evaluating a petition filed under Government Code section 11340.6.

40 Code of Regulations sections 261.9, 264.1, 265.1, 268.1, 270.1, 273.80, and 273.81.

40 Code of Federal Regulations part 273 (the federal Universal Waste Rule). Provides collection and management standards for handlers and transporters of universal waste and provides the petition process for including a hazardous waste under the requirements of part 273.

These regulations are based on, but are not identical to, the following federal regulations:

40 Code of Federal Regulations, sections 260.10, 264.1, 265.1, 268.1: These are regulations which were in existence before the federal Universal Waste Rule but were modified to take account of the existence of the Universal Waste Rule.

40 Code of Federal Regulations, section 261.9: This part was added to the pre-existing part 261 regulations to establish universal waste as a subset of hazardous waste.

40 Code of Federal Regulations, part 273: This regulation provides the basic regulatory standards of the federal Universal Waste Rule.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

##### Existing State Law

CRTs are identified as a hazardous waste under State law due to the levels of both soluble lead pursuant to section 66261.24, subsection (a)(2) and insoluble lead pursuant to section 66261.24, subsection (a)(3). CEDs often contain lead and other regulated inorganic persistent and bioaccumulative toxic substances and can pose a potential harm to the environment when these devices are placed in municipal landfills. The primary constituents of concern include heavy metals, lead solder, brominated flame retardants and chlorinated plastics. While most CRTs are hazardous, only some CEDs are hazardous waste when discarded and, thus, pose a threat to the environment.

In August 2001, DTSC adopted emergency regulations for the management of CRT materials. The emergency regulations ensure that CRT materials are not disposed in municipal solid waste landfills and provide a reduced set of requirements from the "full" hazardous waste management standards (e.g., permits, use of the hazardous waste manifest, hazardous waste transporter registration, accumulation limits). DTSC will continue to readopt the emergency CRT material regulations, and when the proposed regulations are adopted, the emergency regulations will become inoperative.

##### Existing Federal Law

CRT materials became hazardous wastes on or prior to the adoption of the federal "Toxicity Characteristic" or "TC" (1989). Discarded CRTs are a hazardous waste under federal law because they exceed the levels for soluble lead pursuant to 40 Code of Federal Regulations (C.F.R.), section 261.24 (there is no total lead criteria in federal hazardous waste law). However, the United States Environmental Protection Agency (U.S. EPA), concerned with the large universe of generators and the potential for illegal, environmentally improper disposal, has generally deferred any action on waste CRT materials and electronic wastes until specific regulations can be developed. In June 2002, U.S. EPA published proposed regulations for CRTs and the glass removed from CRTs. In the proposed regulations, CRTs and processed CRT glass would not be regulated as solid wastes under RCRA if these wastes are sent for recycling.

U.S. EPA promulgated the federal "Universal Waste Rule" on May 11, 1995 to streamline regulation of the collection and management of common hazardous wastes, designated as universal wastes, such as batteries, pesticides, and thermostats (fluorescent lamps were added to the federal rule in 1999). The federal Universal Waste Rule establishes alternative management standards for handlers and transporters of these universal wastes. It also authorizes states to designate wastes as universal wastes if the wastes meet the criteria established by U.S. EPA.

U.S. EPA established the following general criteria for universal wastes:

1. The wastes are generated by a large number of generators whose size makes implementation of an effective hazardous waste program difficult for regulatory agencies.
2. The wastes are generated in relatively small quantities in a wide variety of settings, including all sectors of society, other than industrial settings.
3. The wastes are present in significant volumes in non-hazardous waste management systems (i.e., municipal solid waste stream).



4. Management of these wastes under the Universal Waste Rule is more likely to divert them from the municipal solid waste stream than management under the full hazardous waste management requirements.

## Policy Statement

### Background

CRTs are found in virtually every household and business in the State. They are used in television sets, computers and scientific equipment. With the rapid evolution of computer technology, computers become obsolete in a short period of time and their CRTs then become waste. Each year, an estimated six million CRTs are disposed in California.

A CRT is used to visually display electronic information by focusing electrons from an electron gun on light-emitting phosphors on the front portion of the CRT's screen. The decelerating electrons create X-ray radiation that must be shielded to minimize the radiation exposure to the user. Lead in the form of lead oxide is added to the CRT glass to diminish the X-ray flux. The lead is incorporated into the glass tube in varying concentrations with the rear portion of the CRT containing the highest levels of lead. A typical 17-inch computer monitor contains approximately two pounds of lead. Larger CRTs may contain up to 10 pounds of lead each.

Lead is a potent developmental neurotoxicant. Recent research has shown that any measurable level of lead found in children's blood is accompanied by statistically significant deficits in intellectual performance. Additionally, lead exposure can result in toxic effects upon the kidneys and circulatory and skeletal systems.

CEDs are even more common than CRTs in our society. These items are any electronic devices that are used in the home, business or elsewhere, including, but not limited to, computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, video cassette players/recorders, compact disc players/recorders, calculators, and some appliances. Although there are no accurate estimates for consumer electronic device generation in California, the U.S. EPA estimated in 1999 that 1.8 million tons of a "subcategory of consumer electronics" was generated nationally, which accounted for about 1% to 2% of the municipal solid waste stream.

The potential for mismanagement also exists for CEDs. However, these devices tend to be smaller in size and more easily "hidden" in the solid waste stream. For this reason, the potential for inappropriate disposal is even greater for CEDs.

## Problem Statement

### *Status of CRT Materials Prior to the Emergency CRT Regulations*

DTSC has already identified CRT materials as hazardous wastes by action of the pre-existing State toxicity criteria (prior to 1991) and the State's toxicity characteristic (after 1991). The pre-existing hazardous waste identification regulations<sup>2</sup> established important portions of the State's waste classification program. Regulatory thresholds were adopted that established levels at which wastes were classified as hazardous due to a number of different criteria, including toxicology criteria, extractable levels of specified elements and compounds, and total concentrations of specified elements and compounds. The proposed universal wastes meet at least one of these criteria, are identified as hazardous waste and are subject to the standards of the hazardous waste control law.

The proposed regulations add hazardous waste CRT materials to the State's existing universal waste regulations, and establish standards for CRT recycling that differ from those under the current State universal waste rule. The proposed CRT materials regulations amend sections 66261.9 and 66273 et seq. These regulations are needed to establish standards that will promote the proper management of waste CRTs by generators (rather than promoting disposal outside of the hazardous waste control system) and provide a legal alternative that is pragmatically possible to comply with and to enforce. The regulations are also necessary to promote the ongoing collection and recycling activities with standards for environmental protection to those activities.

### *Consumer Electronic Devices*

Although CEDs were not included in the emergency regulations, they are similar to CRT materials in components and potential hazards. This regulation package proposes to add CEDs to the list of universal waste in the Universal Waste Rule (section 66273 et seq.). Thus the management standards for CEDs will be the same as for other universal wastes.

### *Current Regulations<sup>3</sup> and the Management of Electronic Wastes*

Compliance with the existing hazardous waste control law standards requires businesses to: develop

<sup>2</sup> Final Statement of Reasons for Proposed Regulations, R-45-78, "Criteria for Identification of Hazardous and Extremely Hazardous Wastes."

<sup>3</sup> Unless otherwise indicated, "existing regulations," "existing laws," "current regulations," or "current laws" means: the situation that would exist if the emergency regulations that currently govern CRT materials were not in effect, and if the proposed regulations are not adopted.



training and management programs for CRT materials and CEDs, accumulate these materials pursuant to requirements for hazardous wastes, and utilize potentially expensive accumulation and transportation options. In addition, current laws subject businesses that generate waste CRTs and CEDs to fees and inspections by the local Certified Unified Program Agencies (CUPAs).

A large portion of the generators of waste CRTs and CEDs (households and small businesses) do not generate other hazardous wastes and are not familiar with the hazardous waste laws and regulations. They do not have regulated storage and accumulation points, employee training programs, record keeping systems, or hazardous waste identification numbers. Prior to the adoption of the emergency regulations for CRT materials, these generators either: accumulated waste CRTs in unauthorized locations (e.g., their garages), placed them with their trash (non-hazardous landfill disposal) because they were unaware that the CRTs cannot be disposed to a municipal landfill, participated in local government collection take back programs (that were operating without authorization), or transported them to a CRT recycler (who was operating without authorization).

Given the requirements that existing law (without the emergency regulations in place) places on households, businesses and others not typically regulated under the hazardous waste control law, DTSC expects that many households and businesses will continue to dispose of their waste CRTs in ways that could result in the increased potential for human and environmental exposure to lead, if permanent changes in the regulations are not adopted.

Through community collection events and curbside pickup, many landfills have accumulated significant quantities of discarded televisions and monitors, which is allowed under the emergency regulations. If the proposed regulations are not adopted, municipal landfill operators will reject hazardous waste CRTs that have been disposed with the trash because most municipal landfills are not permitted to accept hazardous waste. This will eliminate an appropriate means<sup>4</sup> for households and small businesses to dispose of their CRTs properly, which can be expected to lead to increased rates of illegal disposal unless the emergency regulations are made permanent. Prior to the adoption of the emergency regulations, disposal was observed in ditches, along roadsides, in empty lots, and in other inappropriate places.

CRTs and CEDs are infrequently generated, in small quantities, by every household, school, hospital, or business. The relative risks associated with managing

small quantities of waste CRTs and CEDs are low, as compared to the risk posed by management of most other hazardous wastes. For these reasons, the regulation of CRTs and CEDs under the regulatory scheme of the Universal Waste Rule is appropriate. The application of Universal Waste Rule standards to the management of these wastes will provide an approach to regulating these wastes that is commensurate with the risk of mismanagement and will promote their recycling.

#### *Electronic Waste Recycling*

Currently, as a result of the adoption of the emergency regulations for CRTs, an effective CRT recycling industry is developing in the State. Those facilities that have complied with the emergency regulations would be out of compliance with hazardous waste permitting requirements if the proposed regulations are not adopted. Therefore, the proposed regulations are necessary to continue developing the recycling infrastructure.

Waste CRT materials and CEDs must be regulated in a manner that protects human health and the environment, promotes the safe collection and recycling of these wastes, and ensures adequate recycling capacity. Management of CRT materials and CEDs as "universal waste" is necessary to achieve these goals.

There is some recycling of waste CEDs in the State; however, there is insufficient recycling capacity to accommodate the number of CEDs that are currently being disposed in municipal solid waste landfills. The proposed regulations will temporarily allow the continued disposal of these wastes to municipal landfills through 2006 for households and small businesses. This will allow time to establish collection programs, to develop public awareness programs, and to increase recycling capacity.

#### *Universal Wastes are Different from Other Hazardous Wastes*

Universal wastes differ from most other hazardous wastes in the following manners:

- Universal wastes are lower risk hazardous wastes because they typically contain lower concentrations of hazardous constituents, lack the mobility of liquid wastes, and lack serious fire, explosion or acute toxicity hazards.
- Universal wastes are generated by a wide variety of entities including virtually all businesses and most households. DTSC estimates that there are at least 1,000,000 commercial generators of universal wastes in the State versus about 90,000 active generators of other hazardous wastes. Note that universal wastes are generated at most businesses as opposed to the industrial facilities that generate most other hazardous wastes.

<sup>4</sup> The emergency regulations allow landfills to segregate CRTs from the municipal solid waste and send them to recycling.

- Universal wastes, such as CRT materials and CEDs, are frequently generated in non-industrial settings such as homes, offices, retail and wholesale commercial establishments, and government agencies.

*Proposed Regulations will Enhance Waste Management*

Hazardous wastes that are candidates for inclusion under the Universal Waste Rule must meet certain criteria. Inclusion of each waste is contingent on whether the regulation of that waste as a universal waste meets the goals of the Universal Waste Rule. Those goals are that regulation under the Universal Waste Rule (1) is appropriate for the waste or category of waste; (2) will improve management practices for the waste or category of waste; and (3) will improve the implementation of the hazardous waste program. Regulation of CRT materials and CEDs under the Universal Waste Rule meets all of these goals.

The proposed regulations reduce the regulatory requirements for persons managing CRT materials and CEDs in California. The regulations will allow persons to legally transport their televisions, computer monitors, and VCRs to recyclers or to other intermediate collection points. Similarly, DTSC proposes to regulate business-generated CRT materials and CEDs as universal wastes, thereby applying common-sense management standards that are commensurate with the risks posed by the waste(s), in lieu of full hazardous waste management standards.

*Petition Process for Adding Other Wastes to the Universal Waste Rule*

The proposed regulations will add a petition process to the State Universal Waste Rule, similar to the one in the federal Universal Waste Rule, which will allow anyone to petition the State to add other wastes or categories of wastes to the State's Universal Waste Rule. The proposed petition process is similar to the petition language contained in 40 C.F.R. sections 273.80 and 273.81, but also requires the use of the petition review procedures found in the California Government Code sections 11340.6 and 11340.7.

Inclusion of the petition process within the existing Universal Waste Rule is necessary to seek and maintain the State's authorization for the federal hazardous waste program. The petition process will allow DTSC to designate the CRT materials and CEDs proposed in this rulemaking as universal waste, as well as other wastes in the future.

Proposed Regulations

The proposed regulations address hazardous waste CRT materials and CEDs and contain standards that differ from the standards in current hazardous waste regulations. These regulations are needed to establish

standards that will promote the proper management of CRT materials and CEDs by generators and will provide an alternative that encourages recycling. Thus, these regulations should reduce the likelihood of disposal outside of the hazardous waste management system. They also apply necessary standards for environmental protection to the relevant disposal and recycling activities.

The proposed regulations only apply to those CEDs that are identified as hazardous waste. Rapid technological advances often render CEDs obsolete in a short period of time, and the rate of generation of waste CEDs is increasing. The huge variety of CEDs and the rapid rate with which new CEDs enter the market dictates that regulators will never be able to create a list of all the possibly hazardous CEDs. As a category, CEDs may or may not be hazardous. When discarded, only waste CEDs that are hazardous waste (i.e., exhibit the toxicity characteristic for hazardous waste) would be universal waste CEDs under the proposed regulations. Once again, DTSC is not proposing to regulate all waste CEDs.

The proposed regulations would modify the current regulations for universal wastes. The proposed regulations add waste CRT materials and CEDs to the list of hazardous wastes that can be managed in compliance with the standards for universal wastes. They would exempt CRT materials and CEDs from full hazardous waste management as long as they are managed pursuant to universal waste requirements.

The universal waste standards differ greatly from the standard hazardous waste regulations. The universal waste standards provide greater flexibility than the full hazardous waste regulations. The universal waste standards will facilitate the safe collection and recycling of CRT materials and CEDs.

These proposed regulations will have several effects. They will:

1. Permit the management of CRT materials destined for recycling (currently regulated as hazardous wastes) as universal wastes.
2. Create a new, parallel, set of regulatory standards for CRT materials that are similar to the existing universal waste standards, which will apply to generators, transporters, intermediate accumulation points, and recyclers.
3. Permit transportation of CRT materials without the use of a uniform hazardous waste manifest and a registered hazardous waste transporter (i.e., allows the use of a common carrier).
4. Limit the holding period at transfer facilities in non-industrial zones to 6 days, which is the same limit for hazardous waste shipments pursuant to

Health and Safety Code section 25123.3 (as compared to 10 days under the federal hazardous waste law).

5. Require persons to package CRT materials in a manner that prevents breakage and releases of CRT glass to the environment.
6. Require containers or pallets of CRT materials to be properly labeled and marked.
7. Place a one (1) year accumulation time limit on handlers of CRT materials.
8. Require that the notifications for certain universal waste handlers and CRT material recyclers be submitted to DTSC.
9. Require the use of a bill of lading for off-site shipments of CRT materials.
10. Promote the collection of CRT materials for ultimate recycling.
11. Allow persons who generate or accept electronic wastes (e.g., businesses, governmental entities and households) to operate as off-site accumulation points without issuance of a hazardous waste storage facility permit.
12. Require that the CRT materials ultimately reach a facility that is permitted to either recycle or dispose of hazardous wastes (a destination facility).
13. Create a new self-implementing authorization for certain lower-risk CRT recycling activities.
14. Require CRT materials exporters to notify DTSC and the local CUPA prior to intended shipments being sent out of the United States.
15. Add the management of CEDs under the Universal Waste Rule, as specified in chapter 23.
16. Add the petition process that DTSC will use to evaluate inclusion of additional wastes under the Universal Waste Rule, as specified in chapter 23.

#### *Effect of these Regulations*

The proposed regulations would replace the current emergency rules for CRT materials, add CEDs to the list of universal wastes in sections 66261.9 and 66273.1, and add a petition process for adding waste to the Universal Waste Rule. The regulations would remove the CRT materials and CEDs from classification as a hazardous waste when managed in compliance with the regulations (general universal waste standards for CEDs and specific universal waste standards for CRT materials).

Note that the universal waste approach does not violate the mandate of Health and Safety Code section 25159 to adopt and maintain regulations that allow the State to maintain its Resource Conservation and Recovery Act (RCRA) authorization. State law must be equal or broader in scope and stringency to the

corresponding federal law. The scope of the proposed regulations is slightly greater than the scope of the federal rule. The stringency is identical because the standards established in the proposed regulations are virtually identical to those of the federal Universal Waste Rule. As discussed previously, CRT materials and CEDs meet the criteria for designation as universal wastes.

#### CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has prepared an Initial Study and a draft Negative Declaration that indicate no significant effect from the project on the environment. These documents are available for review with the rulemaking file and are also being noticed and circulated for comment pursuant to the requirements of the CEQA Guidelines. Copies of the draft CEQA documents are posted on the DTSC Internet site at <http://www.dtsc.ca.gov>.

#### PEER REVIEW

Under the provisions of Health and Safety Code section 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard or other requirement subject to scientific peer review. DTSC's 1978 waste classification rulemaking established the toxicity criteria, including the Soluble Threshold Limit Concentration (STLC) and the Total Threshold Limit Concentration (TTLC), which identify universal wastes as hazardous wastes. In 1991, DTSC's RCRA authorization rulemaking adopted the Toxicity Characteristics (TC) for lead (and other constituents) that were established in 40 C.F.R. section 261.24 by the U.S. EPA. DTSC and U.S. EPA toxicity characteristics are based on scientific risk assessments. When wastes or solid wastes exhibit a characteristic of hazardous waste, they are regulated under existing hazardous waste standards. This rulemaking establishes management standards based on the fact that the proposed universal wastes are identified as hazardous wastes. Therefore, the level of regulation applied to universal waste handlers and transporters does not require peer review.

#### BUSINESS REPORT

A new report is required under the proposed regulations for certain CRT material handlers and CRT material recyclers (i.e., notification of CRT handling activities). CRT material recyclers must also submit to DTSC an annual report of their CRT materials activities. CRT material handlers who generate less than 5000 kilograms of CRT materials a year, and do not accept CRT materials from offsite sources are not subject to notification requirements. Pursuant to existing requirements of section 66273.32, a large quantity universal waste handler who manages CEDs is also required to prepare and submit an annual



notification to DTSC. In accordance with Government Code section 11346.3(c), DTSC hereby makes a finding that such reports by businesses are necessary for the health and safety of people of California.

#### FISCAL IMPACT ESTIMATES

**Mandates on Local Agencies and School Districts:** DTSC has made a preliminary determination that adoption of these regulations imposes no new mandates to local agencies and/or school districts.

**Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement:** DTSC has made a preliminary determination that the adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 (commencing with section 17500) of division 4 of the Government Code or other non-discretionary cost or savings to local agencies. Local agencies would incur estimated cumulative additional costs ranging from at least \$140,313 to \$380,813 annually if they choose to manage CRTs as universal waste. Agencies would generate estimated cumulative savings of at least \$18,225 annually to manage CEDs as universal waste.

Local agencies, acting as Certified Unified Program Agencies (CUPAs), are responsible for inspecting many of the businesses that generate hazardous waste, universal waste being a subset of hazardous waste. CUPAs are authorized by Health and Safety Code section 25404.3 to assess fees to recover the costs of these inspections and enforcement programs.

**Cost or Savings to Any State Agency:** The proposed regulations would allow state agencies to choose to manage CRT materials and CEDs as universal wastes instead of managing these wastes under hazardous waste regulations. State agencies would incur annual estimated cumulative additional costs from at least \$93,075 to \$252,467 if they choose to manage CRT materials as universal waste. State agencies would generate annual estimated cumulative savings of at least \$12,659 to manage CEDs as universal waste.

**Cost or Savings in Federal Funding to the State:** DTSC has made a preliminary determination that the proposed regulations would have no impact on federal funding of state agencies. The proposed regulations will place CRT materials and CEDs in the universal waste category; this is permissible under the federal program and will not impact federal funding.

**Effect on Housing Costs:** DTSC has made an initial determination that there will be no impact on housing costs.

**Cost Impacts on Representative Private Persons or Businesses:** The proposed regulations would allow a representative private person and business, as a hazardous waste generator, the choice to manage CRT

materials and CEDs as universal wastes instead of managing those wastes under hazardous waste regulations. DTSC is unable to estimate the cost or savings that would be incurred by managing CRT materials and CEDs as universal waste. Data is not available on the number of CRT materials or CEDs, in any category, generated in the State. Because the average cost to recycle CRT materials and CEDs is known, based on industry estimates used in the State and local fiscal impact analysis, DTSC concludes that there would be nonquantifiable costs incurred to manage CRT materials as universal waste and nonquantifiable savings incurred to manage CEDs as universal waste.

**Significant Statewide Adverse Economic Impact on Businesses:** DTSC has made an initial determination that these proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

#### Assessment Statement:

**(A) Creation or elimination of jobs within California:** DTSC has made a preliminary determination that there will be no significant impact on the creation or elimination of jobs in California. However, the proposed regulation may lead to some increase in employment in the recycling of CRT materials or CEDs, which is expected to be more labor intensive than disposal operations. DTSC does not expect that the proposed regulations would lead to the elimination of any jobs at businesses involved in hazardous waste transport or disposal.

**(B) Creation of new businesses or the elimination of existing businesses within California:** DTSC has made a preliminary determination that it is unlikely that businesses will be eliminated in California as a result of the proposed regulations. A few new businesses may be created to meet the demands for recycling services, although it is more likely that existing businesses will expand to accommodate this new demand. Businesses currently handling or disposing CRT materials and CEDs would not be eliminated because these waste streams comprise a minor share of waste handled by these firms.

**(C) Expansion of businesses currently doing business in California:** DTSC has made a preliminary determination that although existing recycling businesses may expand as a result of the proposed regulations, but it is unable to quantify magnitude of this expansion.

**Effect on Small Businesses:** DTSC has made a preliminary determination that provisions of this rulemaking will have a positive effect on small businesses. The proposed regulations would allow small businesses to avoid the high compliance costs



associated with hazardous waste management by managing CRT materials and CEDs as universal waste rather than as hazardous waste.

#### **CONSIDERATION OF ALTERNATIVES**

DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. DTSC invites interested persons to present arguments, with respect to the various options, at the scheduled public hearing, or during the written comment period.

#### **AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS**

Copies of the Notice, Initial Statement of Reasons, and the text of the proposed regulations are posted to DTSC's Internet site at <http://www.dtsc.ca.gov> or may be obtained from Ms. Joan Ferber of DTSC's Environmental Analysis and Regulations and Audits Section as specified below. The information upon which DTSC relied is also available at the address listed below.

#### **AVAILABILITY OF THE ANALYSIS REQUIRED UNDER HEALTH AND SAFETY CODE SECTION 25150.6**

The analysis required under Health and Safety Code section 25150.6 is available for concurrent public review and comment. It can be obtained from DTSC's Internet site at <http://www.dtsc.ca.gov> or from Ms. Joan Ferber of DTSC's Environmental Analysis and Regulations Section as specified below. The final Health and Safety Code section 25150.6 analysis will be made available to all persons commenting on the regulations and on DTSC's Internet site at least 10 days before the final regulations are adopted.

#### **POST-HEARING CHANGES**

After the close of the comment period, DTSC may adopt the proposed regulations. If substantial changes are made, the modified text will be made available for comment for at least fifteen (15) days prior to adoption. Only persons who request the specific proposed regulations, attend the hearing, or provide written comments on these specific regulations will be sent a copy of the modified text, if substantive changes are made.

Once a regulation has been adopted, DTSC prepares a Final Statement of Reasons, which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments and includes other material, as required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be

obtained from Ms. Joan Ferber at the address listed below. A copy of the Final Statement of Reasons will be posted on DTSC's Internet site at <http://www.dtsc.ca.gov>, along with the date the rule-making is filed with the Secretary of State and the effective date of the regulations.

#### **CONTACT PERSONS**

Inquiries regarding the technical aspects of the proposed regulations may be directed to Ms. Ellen L. Haertle of DTSC at (916) 324-1814 or, if unavailable, Mr. Charles Corcoran of DTSC at (916) 327-4499. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments or contentions regarding rulemaking and/or supporting documents must be submitted in writing or may be presented orally or in writing at the public hearing in order for them to be considered by DTSC before it adopts, amends, or repeals these regulations. To be included on this regulation package's mailing list, and to receive updates of this rulemaking, please leave a message on the DTSC mailing list phone line at (916) 324-9933 or e-mail: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov).

Please direct all written comments, procedural inquiries and requests for documents by mail, e-mail or fax to:

Ms. Joan Ferber, Regulations Coordinator  
Environmental Analysis and Regulations Section  
Department of Toxic Substances Control  
Mailing Address: 1001 "I" Street, 22nd Floor  
P.O. Box 806  
Sacramento, CA 95812-0806

E-mail Address: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov)

Fax Number: (916) 323-3215

Ms. Ferber's phone number is (916) 322-6409. If Ms. Ferber is unavailable, please call Ms. Nicole Sotak at (916) 327-4508 or Mr. James McRitchie at (916) 327-8642.

## **TITLE 22. DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

### **45-DAY PUBLIC NOTICE AND COMMENT PERIOD**

#### **PROPOSED REGULATIONS**

#### **MERCURY WASTE CLASSIFICATION AND MANAGEMENT**

**DTSC Reference Number: R-02-04**

**NOTICE IS HEREBY GIVEN** that the Department of Toxic Substances Control (DTSC) proposes to add sections 66260.22, 66260.23, and 66261.50 (the latter in a new article 4.1) to chapter 11, and sections

66273.7.1 through 66273.7.10, 66273.21, and 66273.41 to chapter 23 of Title 22, Division 4.5 of the California Code of Regulations. DTSC also proposes to amend the Table of Contents and sections 66261.1, 66261.3, 66261.6, 66261.9 and 66261.101 of Chapter 11, section 66262.11 of Chapter 12, section 66264.1 of Chapter 14, section 66265.1 of Chapter 15, section 66268.1 of Chapter 18, section 66270.1 of Chapter 20, and sections 66273.1, 66273.5, 66273.8, 66273.9, 66273.13, 66273.14, 66273.19, 66273.33, and 66273.34 of title 22, California Code of Regulations. These proposed additions and amendments pertain to the classification and management of discarded mercury-containing products.

#### PUBLIC HEARING AND WRITTEN COMMENT PERIOD

DTSC will hold a public hearing on the proposed regulations on September 30, 2002 at 1:30 p.m. in the Central Valley Auditorium on the 2nd floor of the California Environmental Protection Agency (Cal/EPA) Building, 1001 "I" Street, Sacramento. At that time any person may present statements or arguments, orally or in writing, relevant to the proposed regulations. Written comments received by DTSC by September 30, 2002 will be considered. DTSC may propose changes to the regulations based on relevant comments. Proposed regulatory changes may include (1) adding or removing hazardous waste listings, universal wastes, or universal waste standards; (2) amending additional regulations; or (3) separation of the proposed regulations into two rulemakings.

Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register prior to the hearing. Pre-hearing registration will be conducted at the location of the hearing from 1:00 p.m. to 1:30 p.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded the opportunity after the registered persons have been heard.

If you will require accommodations for the hearing impaired please contact DTSC at the address and phone number provided at this end of this Public Notice.

#### AUTHORITY AND REFERENCE

##### Authority:

These regulations are being adopted under the following authority:

Health and Safety Code section 25140: Authority to prepare, adopt, and revise listings of hazardous wastes.

Health and Safety Code section 25150: Authority to establish standards for managing hazardous wastes.

Health and Safety Code section 25150.6: Authority for DTSC to exempt a hazardous waste management activity from one or more statutory requirements upon making specified findings.

Health and Safety Code section 25214.6: Makes mercury-containing light switches removed from motor vehicles subject to management under chapter 23 and any other applicable regulation adopted by DTSC.

Health and Safety Code section 58012: General authority for DTSC to adopt regulations.

##### Reference:

These regulations are being adopted to implement, interpret, or make specific the following statutes:

Health and Safety Code section 25159.5: Directs DTSC to conform State regulations to the federal regulations as much as is consistent with protection of human health and the environment.

Health and Safety Code section 25179.4: Directs DTSC to make promotion of source reduction and promotion of recycling its top two priorities for the hazardous waste management program.

Health and Safety Code section 25212: Makes any person who removes a mercury switch from a major appliance a hazardous waste generator, subject to all applicable requirements. Makes failure to remove a mercury switch from a major appliance a violation of chapter 6.5 of the Health and Safety Code. Directs DTSC and the Certified Unified Program Agencies (CUPAs) to incorporate the above requirements into their respective inspection and enforcement plans and to coordinate the regulation of removed mercury switches that are moved between jurisdictions.

Health and Safety Code section 25214.6: Makes mercury-containing light switches removed from motor vehicles subject to management under chapter 23 and any other applicable regulations adopted by DTSC.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

##### Summary of Existing Statutes and Regulations

##### 1. Classification of Mercury-Containing Waste

###### *Federal Criteria*

Under the United States Environmental Protection Agency's (U.S. EPA's) regulations, a waste has any of four hazardous waste characteristics (ignitability, corrosivity, reactivity, or toxicity) is said to exhibit that characteristic and is generally classified as a hazardous waste. Additionally, a waste that appears on any of four lists of hazardous wastes is classified as a hazardous waste. The federal criteria for identifying

hazardous wastes have been adopted in California, pursuant to section 25159.5 of the Health and Safety Code, in subsection (a) of section 66261.24 of the California Code of Regulations, title 22.<sup>1</sup>

A waste with a leachable concentration of a toxic contaminant equal to or exceeding the regulatory level for that contaminant is a hazardous waste. Leachable concentrations are determined by the Toxicity Characteristic Leaching Procedure (TCLP), published by U.S. EPA in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods* (SW-846). The TCLP regulatory level for mercury is 0.2 milligrams per liter. A waste with a leachable mercury concentration that equals or exceeds this value is classified as a hazardous waste.

California has also adopted U.S. EPA's four lists of hazardous wastes in article 4 of chapter 11. The four lists and their corresponding sections in the regulations are:

- The 'F' List—"Hazardous Wastes from Non-Specific Sources" (Cal. Code Regs., tit. 22, § 66261.31);
- The 'K' List—"Hazardous Wastes from Specific Sources" (Cal. Code Regs., tit. 22, § 66261.32); and
- The 'P' and 'U' Lists—"Discarded Commercial Chemical Products, Off-Specification Species. Container Residues and Spill Residues Thereof" (Cal. Code Regs., tit. 22, § 66261.33).

Several mercury-containing wastes appear on the federal hazardous waste lists. They are:

- K071 Brine purification muds from the mercury cell process in chlorine production, in which separately prepurified brine is not used.
- K106 Wastewater treatment sludge from the mercury cell process in chlorine production.
- P065 Mercury fulminate.
- P092 Phenylmercury acetate.
- U151 Mercury.

A mercury containing waste that meets any of the above listing descriptions is classified as a hazardous waste.

#### California Criteria

California has adopted additional properties for the corrosivity and toxicity characteristics. Wastes that have only these properties (i.e., that do not have the properties found in the federal regulations), and do not appear on any of the four federal lists, are "California-only" or "non-RCRA" hazardous wastes.

Toxicity is generally the characteristic of concern with mercury-containing wastes. A mercury containing waste that is not identified as toxic under federal criteria is toxic under California's criteria if it has any of the following properties:

- Its extractable mercury concentration, as determined by the Waste Extraction Test (WET), equals or exceeds 0.2 milligrams per liter;
- Its total mercury concentration equals or exceeds 20 milligrams per kilogram of sample;
- It has an acute oral lethal dose (LD)<sub>50</sub> less than 2,500 milligrams per kilogram;<sup>2</sup>
- It has an acute dermal LD<sub>50</sub> less than 4,300 milligrams per kilogram;<sup>2</sup>
- It has an acute inhalation lethal concentration (LC)<sub>50</sub> less than 10,000 parts per million as a gas or vapor;<sup>2</sup>
- It has an acute aquatic 96-hour LC<sub>50</sub> less than 500 milligrams per liter;<sup>2</sup> or
- "It has been shown through experience or testing to pose a hazard to human health or environment because of its carcinogenicity, acute toxicity, chronic toxicity, bioaccumulative properties or persistence in the environment."

Appendix X of chapter 11 contains a list of nearly 800 chemicals that, if present in a waste, are presumed to make the waste hazardous. A number of the chemicals listed in Appendix X contain mercury. However, a waste that contains a chemical listed in Appendix X but does not exhibit a hazardous waste characteristic is not a hazardous waste.

#### 2. Hazardous Waste and Universal Waste Management

Chapter 23, section 66273.1 et seq., contains DTSC's Universal Waste Rule (UWR). The UWR allows certain hazardous wastes that are widely generated to be managed under standards that are appropriate for the hazards of the wastes and the types of entities that generate them. For persons who generate, consolidate, and transport universal wastes, these standards are easier to comply with than the requirements that govern the management of most hazardous wastes. These requirements will lead to higher rates of proper management and disposition of these widely-generated, relatively low risk wastes and better protection of public health and the environment. The standards that generators, consolidators, and transporters of most hazardous wastes must comply

<sup>1</sup> All subsequent regulatory references, unless otherwise indicated, are to the California Code of Regulations, title 22, division 4.5

<sup>2</sup> The LD<sub>50</sub> and LC<sub>50</sub> values are determined using animal toxicity tests. They represent the dose or concentration of a sample of waste that is required to kill half of a group treated animals.



with are summarized below, followed by summaries of the standards that apply to handlers and transporters of universal waste.

#### *Hazardous Waste Generator Standards*

Generators of mercury-containing hazardous wastes are subject to requirements found in chapter 6.5 of the Health and Safety Code and in chapters 12 and 15 of California Code of Regulations, title 22. Some of important generator requirements are listed below. Generators must:

- Determine whether their waste is hazardous;
- Obtain an EPA identification number;
- Accumulate hazardous waste in compliance with the applicable time limits specified in the Health and Safety Code section 25123.3 (90 days, 180 days, 270 days or 365 days);
- Keep records;
- Label/mark containers in which hazardous waste is accumulated;
- Prepare and implement emergency procedures/contingency plans;
- Train all employees in proper waste handling and emergency procedures, relevant to their responsibilities;
- Ensure that shipments of more than 50 pounds or 5 gallons of hazardous waste are carried by transporters that are registered with DTSC and have obtained an ID number; and
- Submit a biennial report.

#### *Hazardous Waste Consolidation Facility Standards*

A facility that consolidates mercury-containing hazardous wastes generated at offsite locations is required, as a hazardous waste storage facility, to obtain a permit from DTSC. Depending on whether or not the waste is federally regulated, either a full RCRA permit or a standardized permit may be required. Household hazardous waste collection facilities may consolidate mercury-containing hazardous wastes generated by households and Conditionally Exempt Small Quantity Generators. These facilities do not require full or standardized permits; instead, they may operate under the less stringent Permit-by-Rule authorization tier, pursuant to chapter 45.

#### *Hazardous Waste Transporter Standards*

Transporters of mercury-containing hazardous waste (other than those regulated as universal wastes) are subject to the standards for hazardous waste transporters found in chapter 13, and in article 6 of chapter 6.5 of the Health and Safety Code. Hazardous waste transporters must keep a valid registration issued by DTSC in their possession while transporting hazardous waste. Prior to transporting hazardous

waste, a registered transporter must obtain an identification number and a registration certificate from DTSC. A transporter may only carry hazardous waste that is accompanied by a Uniform Hazardous Waste Manifest. The manifest must be signed by the generator and transporter, and must be kept in the transporter's possession.

#### *Standards for Managing Elemental Mercury that is Non-RCRA Hazardous Waste*

Section 66266.120 exempts persons who handle waste elemental mercury from some hazardous waste management requirements. However, these reduced management requirements apply only to elemental mercury that is non-RCRA hazardous waste. Waste elemental mercury that exceeds the TCLP of 0.2 micrograms per liter, and is not otherwise exempt under RCRA regulations, is subject to the full hazardous waste management standards outlined above. Up to 10 pounds of non-RCRA waste elemental mercury may be stored onsite without a permit; up to 10 pounds can be transported to a recycler without a registered hazardous waste hauler or uniform hazardous waste manifest.

#### *Universal Waste Handler Standards*

In lieu of the above requirements, handlers (generators and offsite consolidators) of universal waste (which currently includes lamps, batteries and thermostats):<sup>3</sup>

- Must obtain an EPA identification number only if they accumulate 5,000 kilograms or more of universal waste at any time;
- May accumulate universal wastes for up to one year without a permit;
- Must keep shipping records only if they accumulate 5,000 kilograms or more of universal waste at any time;
- Are subject to more flexible labeling/marketing requirements;
- May train employees informally, (unless they accumulate 5,000 kilograms or more of universal waste at any time, in which case more formal training is required);
- Must contain any releases or residues of universal wastes, determine whether the resulting materials exhibit any hazardous waste characteristic and, if they do, manage the materials as hazardous wastes;
- May ship universal waste using a common carrier; and
- Are not subject to biennial reporting.

<sup>3</sup>. These universal wastes are managed pursuant to Articles 2 and 3 of chapter 23, section 66273.10, *et seq.*



Cathode ray tube (CRT) materials are also universal wastes, pursuant to emergency regulations adopted by DTSC.<sup>4</sup> In addition to complying with the requirements for universal waste handlers listed above, CRT material handlers who accept more than five CRTs or more than 100 kilograms of CRT glass from offsite generators, or who generate more than 5,000 kilograms of CRT material per year, are required to notify DTSC and their local CUPA of their activities. The emergency regulations also allow CRT material handlers to treat or recycle CRT materials, provided they comply with a list of additional requirements. DTSC is currently developing permanent CRT regulations.

Effective January 1, 2002, Health and Safety Code section 25201.16 designates hazardous waste aerosol cans as universal wastes. The requirements for generators and consolidators of intact aerosol cans are very similar to those for the handlers of batteries, lamps, and thermostats in chapter 23 of the regulations. In addition, the aerosol cans statute allows handlers who are not "offsite commercial processors" to puncture, drain, and/or crush universal waste aerosol cans, provided they comply with a list of additional requirements.

#### *Universal Waste Transporter Standards*

Persons who transport universal waste batteries, lamps, thermostats, or CRT materials are regulated as universal waste transporters. Universal waste transporter requirements, which are found in article 4 of chapter 23, are much reduced compared with general hazardous waste transportation requirements. A universal waste transporter is not required to register with DTSC, and is not required to obtain an EPA identification number. The Uniform Hazardous Waste Manifest is not required for universal waste transporters; instead, they may transport universal waste with a bill of lading.

### POLICY STATEMENT

#### 1. Background

A number of sites in California are contaminated with mercury to the extent that clean-up or other mitigation activities have been necessary. Similarly, some of the state's waters exceed water quality standards for mercury, triggering a requirement for development of Total Maximum Daily Loads (TMDLs) under the federal Clean Water Act. The severity of California's mercury contamination problem is further evidenced by fish advisories issued by California's Office of Environmental Health Hazard Assessment (OEHHA) for a number of California

recreational waters. OEHHA has advised the public to restrict or eliminate consumption of sport fish from some of these water bodies because they contain unsafe levels of methylmercury. In spite of the contamination of California's environment with mercury, certain mercury-containing wastes continue to be classified and managed as non-hazardous waste, resulting in the preventable release of more mercury. Other mercury-containing wastes that are widely generated by clinics, hospitals, laboratories, small businesses, and households are classified as hazardous waste and are subject to stringent requirements that are more appropriate for industrially generated wastes. These wastes are more likely to be properly managed and recycled as universal wastes.

#### *Mercury-Containing Wastes Currently Classified as Nonhazardous*

Under California's current waste identification criteria, some mercury-containing wastes are classified as nonhazardous, and may legally be disposed in (non-hazardous) municipal landfills. Based on one national estimate, the Department of Toxic Substances Control (DTSC) calculates that approximately 37.2 short tons of mercury were disposed in California's non-hazardous landfills in 1995. Although there have been decreased uses of mercury in products, DTSC calculates that approximately 17.3 tons of mercury were still disposed in 2000.

DTSC has identified several types of mercury-containing products that are frequently classified as nonhazardous wastes when discarded. While the mercury concentrations in these wastes are relatively low, their management and disposal contribute significant amounts of mercury to the State's environment, due to their large volumes. The wastes include some fluorescent lamps, certain novelty items, and vehicles and large appliances that contain mercury switches.

The mercury found in lamps and novelties can enter the environment when the products break during use, handling, or disposal. The mercury contained in switches is released when an appliance or vehicle is baled, sheared, crushed, or shredded for recycling. Some of the mercury is emitted directly to air, while some remains associated with the non-metallic fluff that is generated during shredding. Shredder fluff, which is produced after shredding both automobiles and appliances, is often used as daily cover in non-hazardous Class 3 landfills in California. Public Resources Code section 42175 already requires the removal of mercury switches from appliances prior to crushing them or transferring them to a baler or shredder for recycling. However, mercury switches generally are still not removed from vehicles prior to recycling.

<sup>4</sup> CRT materials are regulated as universal wastes under Article 7 of chapter 23, section 66273.80, *et seq.*

*Management Standards for Widely Generated Mercury-Containing Wastes*

Many widely generated mercury-containing wastes are currently classified and fully regulated as hazardous wastes. Generators of these wastes must comply with numerous requirements, including labeling standards, accumulation time limits, manifesting, record retention, etc. Before they may accept them from offsite generators, consolidators of these wastes currently must comply with lengthy and relatively expensive permitting or authorization requirements.

Management standards have been adopted for several widely-generated hazardous wastes in DTSC's Universal Waste Rule. Recent legislation [Senate Bill (SB) 633 (stats. 2001, ch. 656)] added section 25241.7 to the Health and Safety Code, which requires that mercury light switches removed from motor vehicles also be managed under the Universal Waste Rule. However, waste-specific management standards for vehicle light switches, and for many other widely-generated mercury-containing wastes, have yet to be adopted.

Large volumes of discarded mercury-containing products produced by certain businesses, government agencies and households in the State continue to be disposed in municipal landfills. In addition to vehicle light switches, these hazardous wastes include such common products as mercury fever thermometers, mercury-added novelty items, and products that contain mercury switches. DTSC believes that allowing these products to be managed as universal wastes would more effectively promote their proper management.

2. Objectives

The objective of these proposed regulations is to encourage the following:

1. pollution prevention through the use of nonmercury containing products,
2. development of products that use mercury alternatives, and
3. recycling of mercury containing waste.

These objectives will be accomplished by:

1. listing intentionally added mercury-containing products that can be recycled or have a nonmercury alternative as hazardous when discarded and
2. developing universal waste management standards to facilitate the collection, storage, and recycling of the mercury-containing waste.

Currently, some widely-generated products that contain mercury are not classified or regulated as hazardous waste. Consequently, the mercury they contain is more likely to enter the State's environment

during management and disposal than would be the case if the products were regulated as hazardous wastes.

The proposed regulations would designate a list of mercury-containing products as hazardous wastes when discarded. The products were chosen based on two criteria: the feasibility of recycling them, and the availability of mercury-free substitutes. These criteria are consistent with section 25179.4 of the Health and Safety Code, in which the Legislature directs DTSC to make promotion of source reduction and recycling its two top priorities for the hazardous waste management program. These mercury-containing wastes would be designated as hazardous wastes and universal wastes. Other mercury-containing wastes are currently hazardous wastes and would be designated as universal wastes with these proposed regulations.

In addition to listing these discarded mercury-containing products as hazardous wastes, DTSC proposes to adopt new standards for managing them. DTSC also proposes new management standards for several categories of discarded mercury-containing products that are hazardous under existing criteria, as universal wastes.

Designating these hazardous wastes as universal wastes would impose appropriate requirements for collection, storage, and transportation to a destination facility, where the mercury-containing wastes will be recycled. In some special instances, disposal is allowed in a hazardous waste landfill.

3. Proposed Regulations

*Proposed List of Mercury-Containing Hazardous Wastes*

The proposed regulations would add a new article 4.1 to chapter 11. Article 4.1 contains a list of mercury-containing products that, when discarded, would be classified as hazardous wastes. Four waste types will be listed in article 4.1: mercury-containing motor vehicle switches, non-automotive mercury switches, lamps that contain mercury and mercury-added novelties. Mercury-containing wastes not appearing on the list would continue to be identified as hazardous or nonhazardous using the existing federal lists and the hazardous waste characteristics in chapter 11.

*Proposed Universal Waste Management of Mercury-Containing Wastes*

The regulations would establish new standards for the management of mercury-containing wastes as universal wastes. They would include standards for both the wastes listed in article 4.1, and for several other widely generated wastes that are hazardous due to their mercury concentration. The new universal

waste management standards for these wastes would be added to the existing standards for batteries, lamps, thermostats, and CRTs in chapter 23.

Under the proposed regulations, generators would be required to properly dispose of their mercury-containing wastes, but would be subject to less restrictive storage and shipment requirements as universal waste handlers. In most cases, universal waste management would be conditioned on ultimately recycling the mercury contained in the discarded products. Currently, California's only mercury retorts (facilities that reclaim mercury) are limited to processing waste fluorescent lamps. All other mercury wastes for which recycling would be required would have to be sent to out-of-state facilities. Permitting requirements for these out-of-state facilities would depend on the individual state's hazardous waste permit requirements.

As with the current universal wastes, common carriers would be allowed to transport the proposed new mercury-containing universal wastes on bills of lading rather than hazardous waste manifests. In order to simplify transportation; the use of registered hazardous waste transporters would not be required. As is true for the current universal wastes, offsite facilities could accumulate the new mercury-containing universal wastes for up to one year without authorization from DTSC.

#### 4. Reason for Proposed Regulations

##### *Why DTSC Proposes to List Mercury Containing Wastes as Hazardous Wastes*

Discarded mercury-containing products have been selected for designation as hazardous wastes based on the availability of non-mercury alternatives and on the feasibility of recycling the products' mercury. DTSC believes this designation will encourage the development and use of non-mercury substitutes, as required by section 25179.4 of the Health and Safety Code. DTSC also believes that allowing management of these and other widely generated mercury containing products under the universal waste standards will maximize the rate of diversion from the nonhazardous waste stream to hazardous waste recycling and disposal. When recovery of the mercury in a product is feasible, managing it as universal waste will be contingent on ultimately recycling it. This will provide a strong incentive for mercury recycling.

The proposed regulations would list certain mercury-containing hazardous wastes in a new article 4.1 of chapter 11. The list is modeled after the RCRA hazardous waste lists, which have been adopted in article 4 of chapter 11. Each listed waste is assigned a unique 'M' number. Descriptions of each listed waste type give specific descriptions of the wastes that are

and are not included. For some wastes, the listing description includes information on when they are considered generated.

The new listed wastes are:

- M001: Mercury-containing motor vehicle switches and vehicles that contain them.

Mercury switches are used in many makes and models of vehicles, both foreign and domestic. These switches are used to control lights in vehicle hoods and trunks, and are used in antilock brake systems. Each switch contains approximately one gram of mercury. Removed from a vehicle, the switches would currently be classified as hazardous wastes, because their total mercury concentration exceeds the Total Threshold Limit Concentration (TTLC) for mercury of 20 milligrams per kilogram. When the total mass of even a small vehicle is taken into account, however, the amount of mercury contained in its switches is generally below the thresholds that would make the vehicle hazardous waste. DTSC estimates that between 0.75 and 1.5 tons of mercury are contained in the vehicles scrapped annually in California. Little of this mercury is currently recycled or disposed as hazardous waste.

These regulations would designate discarded mercury switches, and discarded vehicles that contain them, as hazardous wastes, regardless of the total mass of the vehicle. Under the proposal, hazardous waste would be considered generated when a dismantler decides to crush, bale, shred, or shear a vehicle that contains mercury switches. The entire vehicle would be a listed hazardous waste, unless and until the dismantler removes all of its mercury switches. (Switches that could not be removed with reasonable effort due to *accidental* damage sustained by a vehicle would not cause the vehicle to be classified as a hazardous waste. Waste derived from crushed or shredded vehicles from which all switches had not been removed would not be in the listing description for 'M001' hazardous wastes. Such waste would be characterized as hazardous or nonhazardous using the existing hazardous waste characteristics.)

- M002: Non-automotive mercury switches, and products that contain them.

Mercury switches are used in a variety of products besides vehicles. Smaller products that contain such switches are already hazardous wastes when discarded, because of their relatively small mass relative to the amount of mercury in the switches. Larger, heavier products that have only a single switch containing one gram of mercury (such as some washing machines) may not be hazardous under the current hazardous waste identification criteria. A product weighing more than 50 kilograms (or 110 pounds) and containing 1 gram of mercury would not



exceed mercury's TTLC of 20 milligrams per kilogram (however, such a product could potentially exceed mercury's STLC or TCLP limits of 0.2 milligrams per liter).

These proposed regulations would designate discarded non-automotive mercury switches, and products that contain these switches, as hazardous wastes. The entire product would be a listed hazardous waste, unless and until the generator removed all of the switches. DTSC's intention in designating discarded products with mercury switches as hazardous wastes is to ensure the removal of the switches prior to crushing or otherwise processing of products in ways that could cause mercury to be released.

- M003: Mercury-containing lamps and products that contain them.

All fluorescent lamps, and some other lamp types, contain mercury. Often, discarded fluorescent, mercury vapor, and high intensity discharge (HID) lamps are hazardous wastes because they exhibit toxicity due to their mercury. However, samples of some currently available fluorescent lamps, while not free of mercury, were determined not to be hazardous wastes under the toxicity characteristic. These lamps may be discarded in the municipal (non-hazardous) waste stream in unlimited quantities. Anecdotal evidence suggests that sales of these "non-hazardous" lamps have increased. If more of these lower-mercury lamps are purchased because people wish to avoid managing them as universal wastes or recycling or disposing them as hazardous waste, the amount of mercury entering California's environment could actually increase.

- M004: Mercury-added novelties.

SB 633 (Stats. 2001, ch. 656) added section 15027 to the Public Resource Code, which bans the manufacture and sale of mercury-added novelties, effective January 1, 2003. The bill defines a mercury-added novelty as "a mercury-added product intended mainly for personal or household enjoyment or adornment. A 'mercury-added novelty' includes, but is not limited to, any item intended for use as a practical joke, figurine, adornment, toy, game, card, ornament, yard statue or figure, candle, jewelry, holiday decoration, and item of apparel, including footwear." DTSC is aware of one novelty, a "quicksilver maze," that contained a ball of liquid mercury. Most other novelties likely contain mercury in switches, button cell batteries, or paint applied to their surface. The quicksilver maze would very likely exceed hazardous waste thresholds, if tested. Other novelties might not be classified as hazardous under current regulations. These proposed regulations would designate all novelties meeting the listing description (which is repeated in the regulations, verbatim, from the definition in SB 633) as hazardous wastes.

### *Why DTSC Proposes to Allow Universal Waste Management of Certain Mercury Containing Hazardous Wastes*

The proposed regulations include new universal waste management standards for discarded mercury-containing products. As with the existing universal wastes, the standards would apply to these new universal wastes in lieu of full hazardous waste management requirements. The existing general requirements for universal waste handlers, transporters, and destination facilities would also apply to persons managing these wastes. In developing their respective universal waste rules, U.S. EPA and DTSC used several criteria to determine whether a given category of hazardous waste should be included as universal wastes. The criteria include:

- The waste is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large industrial facilities);
- The waste or category of waste is generated by a large number of generators, frequently in relatively small quantities by each generator;
- Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;
- The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes; and
- Regulation of the waste or category of waste as universal waste will facilitate safe and effective collection and recycling.

DTSC has evaluated each waste it is proposing to include in an expanded Universal Waste Rule against these criteria. DTSC believes that each of the products it proposes to add to the Universal Waste Rule meets most or all of them.

### *Explanation of Each New Universal Waste Category Being Proposed*

- Mercury-containing motor vehicle switches, and vehicles that contain them (M001 Wastes)
- Non-automotive mercury switches and products that contain them (M002 Wastes)
- Mercury thermometers

The thermostats included in the existing universal waste regulations contain mercury tilt switches, which are mounted on bimetallic coils. Therefore, management of one category of mercury switches is already part of the Universal Waste Rule. The current proposal would broaden the rule's applicability to all mercury



switches. As is the case with mercury thermostats, non-mercury alternatives to the mercury switches used in vehicles and other products are readily available. The risks posed by mercury switches in general are also very similar to those posed by those in thermostats. These facts support DTSC's decisions to add switches to the Universal Waste Rule and to establish very similar management standards to those for thermostats.

In order to encourage the removal of mercury switches, vehicles and other products that contain them would be listed hazardous wastes under the proposal, whether or not they exhibited toxicity for mercury. Removal of mercury switches from vehicles and other products would be allowed under the proposed universal waste management standards. The switches covered by these two listings are essentially identical once they are removed. For this reason, management standards for vehicle and non-vehicle mercury switches are included in the same subsections (one covering small quantity handlers, the other large quantity handlers). Standards for management of mercury thermometers are also combined with those for switches because, while switches and thermometers serve entirely different purposes, they contain similar amounts of encapsulated mercury (often in glass), and therefore their management poses very similar risks.

- Dental amalgam wastes

Dental amalgam is composed of approximately 50 percent mercury. Its mercury concentration exceeds the TTLC limit of 20 parts per million and it is normally classified as hazardous waste. Amalgam waste that is recycled and qualifies as scrap metal is exempt from hazardous waste regulations. Other amalgam wastes, such as fines, sludges, single-use traps, etc., are currently regulated as hazardous wastes. Under the proposal, all amalgam wastes could be managed as universal wastes. Dental amalgam waste meets DTSC's criteria for inclusion in the Universal Waste Rule: it is widely generated, it is recyclable, and non-mercury substitutes are available.

- Pressure or vacuum gauges (manometers, barometers, sphygmomanometers, etc.)

These products contain relatively large quantities of mercury and, when discarded, would generally be classified as hazardous wastes. They are also generated relatively widely, in relatively small quantities by each generator. The mercury in a vacuum or pressure gauge cannot be entirely encapsulated. In order to work, the surface of the mercury must be directly exposed to the gas whose pressure is being measured. While they meet the criteria for management as universal wastes, mercury gauges require extra care during handling due to their openings and the large

amount of mercury they contain. The proposed management standards for mercury require that gauges be kept upright, that openings through which mercury could escape be closed, and that gauges be sealed in bags and packed to avoid breakage. Some handlers would also be allowed to drain the mercury from gauges, provided they comply with a number of requirements discussed later.

- Mercury-added novelties

This is a relatively broad, "catch all" category of products, whose definition has been taken directly from SB 633 (in Pub. Resources Code, sec. 15027). Many mercury-added novelties meet the descriptions in the "applicability" sections for other universal wastes. Novelties whose only mercury is contained in batteries can be managed under the standards for universal waste batteries; novelties whose only mercury is contained in switches can be managed under the standards for universal waste switches and thermometers. Specific management standards are established for novelties that contain liquid mercury, and for those that are painted with mercury-containing paint.

- Mercury counterweights and dampers

This new universal waste category includes products that take advantage of mercury's high density. Like the other new universal wastes DTSC proposes to add, these products are widely generated and are more likely to ultimately be sent for hazardous waste recycling or disposal as universal wastes than as fully regulated hazardous wastes. In developing the proposed management standards for these products, it was assumed that they generally contain a relatively large amount of mercury, but that it is fully contained, and that the products are not especially fragile.

- Mercury dilators

The mercury contained in these medical devices is fully enclosed in flexible tubing. The dilators are widely used in hospitals and clinics, statewide. They contain a relatively large amount of liquid mercury, which should be readily recyclable. Further, tungsten powder has replaced mercury in the esophageal dilators manufactured in recent years. As with the other wastes for which DTSC is proposing universal waste management, mercury dilators meet the criteria for designation as universal wastes.

- Mercury containing rubber flooring

DTSC is aware of at least one brand of rubber flooring used in gymnasiums in the 1970s that contained mercury. DTSC believes that the manufacture of this material ceased in the 1970s, but it may continue to be replaced or disposed from time to time. Some of this flooring may contain sufficient mercury to exceed the TCLP threshold for mercury, and consequently, is classified as hazardous waste when

discarded. This proposal would allow universal waste management of rubber flooring that is hazardous due to its mercury content.

- Mercury gas flow regulators

Some older residential gas meters (installed prior to 1961) contain mercury gas flow regulators, each of which can contain 100 grams of mercury. The handlers of these meters are, in most cases, gas company employees or their contractors. Due to the large amount of mercury these regulators contain, they would be classified as hazardous under the existing criteria, as would the meters in which they are found. The proposal would facilitate the proper removal, handling, transportation, and storage of mercury flow regulators by gas company personnel.

*Environmental and Public Health Benefits of Universal Waste Management of Certain Hazardous Wastes Benefits Public Health and the Environment*

In the Initial Statement of Reasons for its original Universal Waste Rule, DTSC provided the rationale for regulating selected hazardous wastes less stringently to facilitate proper management, recycling and disposal. The arguments used for the original three wastes (lamps, batteries, and thermostats) apply equally to the wastes DTSC proposes to add in this rule. DTSC believes that regulating these products under universal waste standards will result in more recycling or proper disposal.

**CEQA COMPLIANCE**

DTSC has prepared an Initial Study and a draft Negative Declaration which indicates no significant effect from the project on the environment. These documents are available for review with the rule-making file and are also being noticed and circulated for comment pursuant to the requirements of the CEQA Guidelines. A copy of the draft CEQA document is posted on the DTSC Internet site at <http://www.dtsc.ca.gov>.

**PEER REVIEW**

DTSC is proceeding with a peer review for the scientific basis of these regulations pursuant to Health and Safety Code section 57004.

**BUSINESS REPORT**

DTSC has determined that this rulemaking will not require businesses to write a new report.

**FISCAL IMPACT ESTIMATES**

**Mandates on Local Agencies and School Districts:** DTSC has made a preliminary determination that adoption of these regulations will create no new local mandates.

**Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement:** DTSC has made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

Local agency generators would incur estimated cumulative costs of less than \$44K in fiscal year 2005/2006 and less than \$110K each year thereafter for managing previous non-hazardous lamps as universal waste, as adjusted for inflation. Certified Unified Program Agencies (CUPAs) would inspect businesses that generate the newly-designated universal wastes. However, these businesses generate other universal wastes and are already subject to inspection by CUPAs. CUPA inspections of generators of the new universal wastes would be incorporated into their existing inspection programs. CUPAs would incur minor additional costs only when complaints specific to the new universal wastes are received. CUPAs are authorized by Health and Safety Code section 25404.3 to assess fees to recover the costs of their programs.

**Costs or Savings to Any State Agency:** There is an increased cost impact to the State and local agencies of less than \$44K in fiscal year 2005/2006 and a cost of less than \$110K each year thereafter for managing previously nonhazardous lamps as universal waste, as adjusted for inflation for local agencies. These costs are not reimbursable because they are incurred by agencies as regulated entities identical to costs incurred by other hazardous waste generators.

**Costs or Savings in Federal Funding to the State:** State agencies would incur estimated cumulative costs of less than \$12K in fiscal year 2005/2006 and less than \$30K each year thereafter, as adjusted for inflation, for managing previous non-hazardous lamps as universal waste. DTSC would incur minor costs to train CUPAs and industry in the new regulations. These costs would be absorbable because the associated workload would be incorporated into DTSC's existing training on universal wastes.

**Effect on Housing Costs:** DTSC has made an initial determination that there will be no impact on housing costs.

**Cost Impacts on Representative Private Persons or Businesses:** Many businesses in California would generate some currently nonhazardous fluorescent lamps. These businesses would experience a minor cost increase for managing these low-mercury lamps as universal waste rather than nonhazardous waste. A much smaller number of businesses generating the other wastes affected by these regulations will see a savings. They include medical and dental offices,

hospitals and laboratories generating mercury devices, appliance repair companies, and some gymnasium operators.

All businesses generating fluorescent lamps that are currently classified as nonhazardous in California would incur minor costs under the proposed regulations. Auto dismantlers and recyclers would incur the largest costs increases—approximately \$2650 per dismantler, at most. Distribution of costs for lamps is unknown since generation rates not known. Although difficult to quantify, businesses including medical offices, appliance repair and recycling, dental offices, and other firms would experience a minor savings compared with the full hazardous waste management system that would be required if the proposed regulation is not enacted.

Households would be subject to the reduced standards of the Universal Waste Rule instead of the more complex and extensive general standards of the Hazardous Waste Control Law. The major costs facing households are associated with potential increased trips for disposal of accumulated universal wastes. However, households would be expected to transport universal waste, along with other hazardous wastes, to existing household hazardous waste collection programs during the same trip. The number of trips would remain the same, which nullifies the cost impacts due to transportation. DTSC expects that universal waste handler provisions would make it easier for private businesses to begin offering consolidations services to households that do not have access to public facilities. These services are not currently available to most households because current requirements make these services unprofitable.

All generators of currently hazardous mercury containing devices that comply with universal waste management standards would incur lower costs than under hazardous waste management.

There may be small costs to businesses for managing newly listed wastes, but these are not expected to be significant. DTSC estimates, for example, that the cost to remove and recycle two mercury switches from automobiles would be about \$6.50 per automobile.

**Significant Statewide Adverse Economic Impact on Businesses:** DTSC has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

#### Assessment Statement:

**(A) Creation or elimination of jobs within California:** The proposed regulations would not cause the elimination of jobs within California and would create a small number of jobs. Since the proposed regulations allow universal waste generators to avoid

the costs of full hazardous waste management, the proposed regulations would not lead to the elimination of jobs within California. Since the transport and recycling fees paid by generators are low on a per-firm basis, no jobs are likely to be eliminated within these entities. It is expected that increased demand for transport and recycling services may lead to a small number of new jobs in those sectors.

**(B) Creation of new businesses or the elimination of existing businesses within California:** Since the proposed regulations allow universal waste generators to avoid the costs of full hazardous waste management, the proposed regulations would not lead to the elimination of existing businesses within California. The increased demand for transport and recycling services is expected to be met via an expansion of existing businesses.

**(C) Expansion of businesses currently doing business in California:** The increased demand for transport, consolidation, and recycling services is expected to be met via an expansion of existing businesses.

**Effect on Small Businesses:** DTSC has determined that provisions of this rulemaking may have an effect on small businesses.

#### CONSIDERATION OF ALTERNATIVES

DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. DTSC invites interested persons to present arguments, with respect to the various options, at the scheduled hearing, or during the written comment period.

#### AVAILABILITY OF TEXT OF REGULATIONS, STATEMENT OF REASONS, AND HSC 25150.6 ANALYSIS

Copies of the text of the proposed regulations, Public Notice, Initial Statement of Reasons, and HSC 25150.6. These analyses are posted to DTSC's Internet site at <http://www.dtsc.ca.gov> or may be obtained from Ms. Joan Ferber of DTSC's Environmental Analysis and Regulations Section as specified below. The information upon which DTSC relied in developing the regulations is also available at the address listed below.

#### POST-HEARING CHANGES

After the close of the comment period, DTSC may adopt the proposed regulations. If substantial changes are made, the modified text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulations



and those who provide written comments on these specific regulations will be sent a copy of the modified text, if substantive changes are made.

Once a regulation has been adopted, DTSC will prepare a Final Statement of Reasons which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments, and includes other material, as required by Government Code section 11346.9. Copies of the Final Statement of Reasons, when completed may be obtained from Ms. Joan Ferber at the address listed below. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at <http://www.dtsc.ca.gov>.

#### **CONTACT PERSONS**

Inquiries regarding the technical aspects of proposed regulations may be directed to Mr. André Algazi of DTSC at (916) 324-3114. If Mr. Algazi is unavailable, please call Ms. Corey Yep (916) 324-5772. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments, or contentions must be submitted in writing, or may be presented orally or in writing at the public hearing, in order for them to be considered by DTSC before these regulations are adopted, amended, or repealed. To be included in this regulation package's mailing list, and to receive updates of this rulemaking, please leave a message on the DTSC mailing list phone line at (916) 324-9933, or e-mail: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov).

Please direct all written comments, procedural inquiries and requests for documents by mail, e-mail or fax to:

Ms. Joan Ferber, Regulations Coordinator  
Environmental Analysis and Regulations Section  
Department of Toxic Substances Control  
Mailing Address: P.O. Box 806  
Sacramento, CA 95812-0806

E-mail Address: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov)  
Fax Number: (916) 323-3215

Ms. Ferber's phone number is (916) 322-6409. If Ms. Ferber is unavailable, please call Ms. Nicole Sotak at (916) 327-4508 or Mr. James McRitchie at (916) 327-8642.

### **TITLE 23. DEPARTMENT OF WATER RESOURCES**

#### **NOTICE OF PROPOSED RULEMAKING**

#### **NOTICE OF PROPOSED ADOPTION OF REGULATIONS FOR PROJECTS UNDER THE FLOOD PROTECTION CORRIDOR PROGRAM OF THE COSTA-MACHADO WATER ACT OF 2000**

NOTICE IS HEREBY GIVEN that the Department of Water Resources proposes to adopt regulations to

establish a process for funding acquisition of property rights and related activities for flood protection corridor projects. These regulations would implement and make specific Water Code Sections 79035 through 79044, 79044.7, and 79044.9, which provide statutory foundation for the Flood Protection Corridor Program. The Program provides for property purchase for and development and construction of flood protection corridor projects, both directly by the Department and through grants to local agencies and nonprofit organizations. Any interested person or his or her authorized representative may present statements or arguments orally or in writing relevant to the action at a hearing to be held at the following location on the following date:

September 30, 2002  
1:00 p.m. to 3:00 p.m.  
Hearing Room A, First Floor  
901 P Street  
Sacramento, California 95814

Hearing Room A is accessible to persons with disabilities and can be reached by entering the building through the entrance on the south side of O Street east of Ninth Street. The nearest off-street parking is on the corner of Tenth and P Streets and is accessed from 10th Street.

Written comments may also be hand-delivered to Earl Nelson, Department of Water Resources, Floodplain Planning and Management Office, Room 1641, Post Office Box 942836, Sacramento, California 94236-0001, or faxed to Earl Nelson at (916) 654-9589, or by using his e-mail address: [enelson@water.ca.gov](mailto:enelson@water.ca.gov). In order to be considered before DWR adopts the proposed regulations, written comments that present statements, arguments, or contentions relative to the proposed action must be received by 5:00 p.m. on September 30, 2002.

After the hearing, DWR may adopt the proposed regulations if they remain substantially the same as described in the informative digest. DWR may make changes in the proposed regulations before adopting them. The text of any modified regulations will be made available to the public with the changes clearly marked at least fifteen (15) days before DWR adopts the regulations. A request for the modified text, if there is one, should be addressed to the agency official designated in this notice. DWR will accept comments on the modified regulations for 15 days after the date on which the text is made available.

#### **AUTHORITY AND REFERENCE**

These regulations are authorized by Water Code Section 79044.9. The regulations implement, interpret and make specific Division 26, Chapter 5, Article 2.5, Sections 79035 through 79044, 79044.7, and 79044.9 of the Water Code. Water Code Sections 8300 and



12580 give DWR general authority to participate in flood control projects. Item No. 3860-101-6010, 2000 Cal. Stat. Ch. 52, is the budget statute providing funding for the program that is the subject of the proposed regulations. Water Code Section 8402(f) contains a definition of the term “designated floodway.”

#### INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Proposition 13, the Costa-Machado Water Act of 2000, is a general obligation bond law passed by the voters of California in March 2000. The Flood Protection Program is contained in Chapter 5 of that Act and Article 2.5 of Chapter 5, beginning at Water Code Section 79035, which contains the Flood Protection Corridor Program. The Act authorizes the issuance of \$1,970,000,000 in general obligation bonds, the proceeds of which are to be placed in an account created by the Act. Article 2.5 of Chapter 5 of the Act transfers \$70 million into a subaccount for purposes of implementing the Flood Protection Corridor Program. Sixty-four million of that amount is for protection, creation, and enhancement of flood protection corridors. This may be done by acquiring easements or other interests to protect or enhance such corridors while preserving or enhancing the agricultural use or the wildlife value of the property. It also may be done by setting back existing levees and performing related work, or by acquiring easements or other property interests in floodplain property that cannot reasonably be protected from flooding. Six million is set aside in the law for assisting cities and counties regarding the National Flood Insurance Program, for that Program’s Community Rating System, and for flood protection for streets and highways in the City of Santee. These purposes are not addressed by the proposed regulations.

The proposed regulations would set up a process for funding projects to be implemented under this program. While recognizing that direct use of the funds by DWR is one of the two funding methods included in the statute, the proposed regulations focus primarily on the other method, funding through grants to local public agencies and nonprofit organizations. The proposed regulations establish qualifications for grantees, criteria for project prioritization, and procedures for applying for and awarding grants.

The proposed regulations include a scope section summarizing the intent of the regulations and a definitions section. There are sections describing the process of managing the funding program, applicant qualifications and funds disbursement, project eligibility requirements, criteria for setting project priorities, requirements related to the contents of grant applications, and requirements and procedures for public

hearings. Also included are a description of the contract required between DWR and a grantee, rules for progress reporting, requirements for preparation of a project maintenance plan, and record keeping and audit requirements.

#### OTHER MATTERS PRESCRIBED BY STATUTE SPECIFICALLY FOR THIS AGENCY FEDERAL CONFORMITY

The proposed regulations deal exclusively with relationships between State government and either local government or nonprofit organizations. There is no known existing or comparable federal regulation or statute. DWR finds that these regulations have no conflict with or duplication of federal regulations.

#### FISCAL IMPACT ESTIMATES

Mandate on Local Agencies and School Districts: If adopted, the proposed regulations will not impose a mandate on local agencies or school districts.

Cost to any Local Agency or School District That is Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.

Costs or Savings to Any State Agency: If adopted, the regulations are not expected to result in an increased cost to the State as it is a grant program and all costs come out of the Bond subaccount. Up to 5 percent of the \$70 million in the subaccount will be used by Department of Finance for administration and processing of the Bond program. Costs to the Department for administration of the Flood Protection Corridor Program will be funded by Bond proceeds. There will be no monetary impact to the General Fund.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies: FEMA flood insurance requirements may be reduced, resulting in a cost savings to local communities.

Cost or Savings in Federal Funding to the State: There is the potential for this program to develop opportunities for federal cost-sharing on future flood control projects, resulting in an increase of federal funds appropriated to the State.

Significant Statewide Adverse Economic Impact Directly Affecting on Businesses including the ability of California businesses to compete with businesses in other states: No adverse economic effect would result from the proposed regulations. In making this determination, DWR relies on the nature of the underlying statute, which establishes bond-financed programs. The expenditure of the bond funds would benefit businesses Statewide. The level of potential private business participation in any individual flood protection project is unaffected, although more projects will

result. There is no imposition of direct costs or benefits to businesses. There is no reporting requirement for businesses.

Cost Impact on Private Persons or Businesses: The regulations will not result in an adverse cost impact. The potential for reduced flood risk could result in reduced flood insurance requirements and enhanced business competitiveness.

Small Business Determination: DWR has determined that the proposed regulations will have no adverse effect on small business and no significant effect on small business in general. Application for a grant under the Flood Protection Corridor Program is voluntary and there may be a potential for benefit to individual small businesses from the enforcement of the regulations to the extent that a grant recipient may hire a small business or businesses to perform part of the project work. The express terms of the proposed action written in plain English are available from the agency contact person named in this notice.

Assessment Regarding the Creation, Expansion or Elimination of Jobs or Businesses in California: DWR has determined that the adoption of these regulations will not: (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California. Results of reduced flood risk may enhance local business' economic viability.

#### **CONSIDERATION OF ALTERNATIVES**

DWR must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed nor would any alternative be as effective and less burdensome to affected private persons than the proposed action. DWR invites interested persons to present statements or arguments with respect to alternatives to the proposed action at the above-mentioned hearing or during the written comment period.

#### **STATEMENT OF REASONS AND INFORMATION**

DWR has prepared an initial statement of reasons for the proposed regulations and has available all the information upon which the proposal is based.

A final statement of reasons will be prepared when all comments have been received and considered, prior to closing the rulemaking record. The statement will be posted on DWR's Internet website at: [www.dwr.water.ca.gov](http://www.dwr.water.ca.gov). and may also be obtained from DWR upon request from the contact person or backup contact person listed on page 5.

#### **TEXT OF PROPOSED REGULATIONS**

Copies of the exact language of the proposed regulations and the statement of reasons and other information, if any, may be obtained from DWR upon request from the agency representative or backup contact person listed below.

If the text of the proposed regulations is substantially changed following the public hearing or the written comment period, the full text of the resulting regulations will be available to the public for additional comment for at least 15 days before the regulations are adopted.

#### **INFORMATION AVAILABLE ON THE INTERNET**

Interested persons may view this notice of proposed action, the initial statement of reasons, and the text of the proposed regulations on DWR's Flood Protection Corridor Program Internet website. The site may be accessed at: [www.dfm.water.ca.gov/fpcp](http://www.dfm.water.ca.gov/fpcp).

#### **CONTACT PERSONS FOR FURTHER INFORMATION**

All of the above information is available for inspection and copying. Anyone wishing to inspect or copy the material or to obtain further information about the substance of the proposed regulations, the statement of reasons, the full text of the regulation language to be adopted, or the information on which the proposal is based, may contact the following:

Agency Representative:  
Earl Nelson, Manager  
Flood Protection Corridor Program  
Floodplain Planning and Management Office  
Department of Water Resources  
(916) 654-3620

Backup Contact Person:  
Bonnie Ross  
Flood Protection Corridor Program  
Floodplain Planning and Management Office  
Department of Water Resources  
(916) 654-4202

### **TITLE 28. DEPARTMENT OF MANAGED HEALTH CARE**

#### **NOTICE OF INTENT TO ADOPT REGULATIONS REGARDING ASSIGNMENT OF ENROLLEES TO CAPITATED PROVIDERS**

#### **NOTICE IS HEREBY GIVEN**

The Director of the Department of Managed Health Care (Director), pursuant to the rulemaking authority granted by sections 1344 and 1346 of the Health and Safety Code, proposes to implement, interpret and

make specific Section 1367 of the Health and Safety Code by adopting Section 1300.67.5 in Title 28, California Code of Regulations (CCR) relating to the assignment of enrollees to capitated providers.

#### **PUBLIC HEARING**

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to section 11346.8(a) of the Government Code. The request for hearing must be received in writing by the Department of Managed Health Care (Department) contact person designated below no later than 15 days prior to the close of the written comment period.

#### **WRITTEN COMMENT PERIOD/ CONTACT PERSON**

Notice is also given that any interested person may present statements or arguments relevant to the proposed action by a written communication addressed to, and received by, the Department's contact person identified below on or before 5 p.m. on September 30, 2002. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day. Written communications may also be sent to Lyn Amor Macaraeg via electronic mail at [lmacaraeg@dmhc.ca.gov](mailto:lmacaraeg@dmhc.ca.gov) or via facsimile at (916) 324-6459. All comments, including facsimile and e-mail transmissions, should include the author's name and mailing address to enable the Department to provide future notices of proposed changes to the regulatory text.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

California Health and Safety Code sections 1344 and 1346 vest the Director with the power to administer and enforce the provisions of the Knox-Keene Health Care Service Plan Act of 1975 (Act).

California Health and Safety Code section 1344 mandates that the Director have the ability to adopt, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter, including rules governing applications and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of the Act. Furthermore, the Director may waive any requirement of any rule or form in situations where in the Director's discretion such requirement is not necessary in the public interest or for the protection of the public, subscribers, enrollees, or persons or plans subject to this chapter.

California Health and Safety Code section 1346 vests in the Director the power to administer and enforce the Act, including but not limited to promoting and establishing standards of ethical conduct for the

administration of plans and undertaking activities to encourage responsibility in the promotion and sale of health care service plan (plan) contracts and the enrollment of subscribers or enrollees in the plans.

The Director proposes regulation section 1300.67.5 to ensure that capitated providers are fully and fairly compensated. Currently, some plans are not assigning enrollees to providers until the date they seek service. The plans then retain the premiums and capitation payments until the date of service. This is true even when an enrollee has paid premiums months earlier to the plan. By engaging in this practice, a plan is shifting the risk to the provider without fully compensating the provider for taking the risk.

Proposed regulation section 1300.67.5 is necessary to clarify requirements for plans contracting with providers for enrollees' benefits and services on a capitated basis.

#### **AUTHORITY**

California Health & Safety Code sections 1344, 1346, and 1367.

#### **REFERENCE**

California Health & Safety Code section 1375.6.

The Department has prepared and has available for public review the following documents:

1. An initial statement of reasons for the new and amended regulations;
2. Text of the legally effective regulations; and,
3. All information upon which this proposal is based (rulemaking file).

A copy of any or all of these items is available upon request by writing to the Department of Managed Health Care, ATTN: Ms. Lyn Amor Macaraeg, 980 9th Street, Suite 500, Sacramento, California 95814, which address will also be the location of public records, including reports, documentation, and other material related to this notice of proposed action. Additionally, a copy of the final statement of reasons (when prepared) will be available upon request by writing to the same address.

#### **INTERNET AVAILABILITY**

Materials regarding this notice of proposed action that are available via the Internet may be accessed at the following website:

<http://www.dmhc.ca.gov/library/regulations/pending.asp>.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

The text of any modified regulation, unless the modification is only nonsubstantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation. The changes will be clearly indicated. A request for a copy of any modified regulation should



be addressed to the contact person designated below. The Director will accept written comments on the modified regulation for 15 days after the date on which they are made available. The Director may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

#### **ALTERNATIVES CONSIDERED**

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the comment period.

#### **FISCAL IMPACT**

- Cost or savings to any state agency: None.
- Cost to any local agency or school district for which Cal. Gov't Code section 17500–17630 requires reimbursement: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.
- Costs or savings in federal funding to the state: None.
- Effect on housing costs: None.

#### **DETERMINATIONS**

The Director has determined that the proposed regulatory action:

- Has no economic impact on small businesses. Though capitated providers are considered small businesses under Cal. Gov't Code section 11342.610, the proposed regulation does not have a significant economic impact on small businesses since the proposed regulation simply clarifies when enrollees shall be assigned to a capitated provider and when payments shall begin. Health care service plans are not a small business under Cal. Gov't Code section 11342.610.
- Does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Cal. Gov't Code section 17500 et seq.
- In his *initial* determination and pursuant to Cal. Gov't Code 11346.5(a)(8), this regulation will not have a significant statewide adverse economic

impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

- “The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.”
- Per CA. Gov't Code section 11346.5(a)(10), does not significantly affect:
  - o The creation of jobs in California;
  - o The elimination of jobs in California;
  - o The creation of new businesses in California;
  - o The elimination of existing business in California;
  - o The expansion of existing businesses in California.

#### **CONTACT PERSON**

Comments, inquiries and substantive questions concerning this proposed regulation may be directed to CURTIS LEAVITT, Assistant Chief Counsel, or to the back up comment person, LYN AMOR MACARAEG, Department of Managed Health Care, Office of Legal Services, 980 Ninth Street, Suite 500, Sacramento, California 95814, (916) 322-6727.

## **TITLE 28. DEPARTMENT OF MANAGED HEALTH CARE**

### **NOTICE OF PROPOSED REGULATION CIVIL PENALTIES**

#### **NOTICE IS HEREBY GIVEN**

The Director of the Department of Managed Health Care (Director), pursuant to the rulemaking authority granted by sections 1344 and 1346 of the Health and Safety Code, proposes to implement, interpret and make specific sections 1387 of the Health and Safety Code and section 11425.50 of the Government Code.

#### **PUBLIC HEARING**

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to section 11346.8(a) of the Government Code. The request for hearing must be received in writing by the Department of Managed Health Care (Department) contact person designated below no later than 15 days prior to the close of the written comment period.

#### **WRITTEN COMMENT PERIOD/ CONTACT PERSON**

Notice is also given that any interested person may present statements or arguments relevant to the proposed action by a written communication addressed to, and received by, the Department's contact person identified below on or before 5 p.m. on



September 30, 2002. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day. Written communications may also be sent to Lyn Amor Macaraeg via electronic mail at [lmacaraeg@dmhc.ca.gov](mailto:lmacaraeg@dmhc.ca.gov) or via facsimile at (916) 324-6459. All comments, including facsimile and e-mail transmissions, should include the author's name and mailing address to enable the Department to provide future notices of proposed changes to the regulatory text.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 1387 of the Health and Safety Code states that persons who violate any provision of the Knox-Keene Act, or any rule or order adopted pursuant to the Act, shall be liable for a civil penalty of two thousand five hundred dollars (\$2500) for each violation. The Director of the Department shall bring a civil action to collect the civil penalty in any court of competent jurisdiction.

Section 11425.50(e) of the Government Code requires that guidelines for penalties be adopted as regulations.

The proposed regulation clarifies that continuous violations of the Act shall be considered separate and distinct violations, punishable by a fine of two thousand five hundred dollars (\$2,500) per day.

#### AUTHORITY

California Health and Safety Code sections 1344, 1346 and 1387.

#### REFERENCE

California Health and Safety Code section 1387 and Government Code section 11425.50.

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE

The Department has prepared and has available for public review the following documents:

1. An initial statement of reasons for the new regulation;
2. Text of the legally effective regulation; and,
3. All information upon which this proposal is based (rulemaking file).

A copy of any or all of these items is available upon request by writing to the Department of Managed Health Care, ATTN: Ms. Lyn Amor Macaraeg, 980 9th Street, Suite 500, Sacramento, California 95814. This address will also be the location of public records, including reports, documentation, and other material related to this notice of proposed action. Additionally, a copy of the final statement of reasons (when prepared) will be available upon request by writing to the same address.

#### INTERNET AVAILABILITY

Materials regarding this notice of proposed action that are available via the Internet may be accessed at the following website:  
<http://www.dmhc.ca.gov/library/regulations/pending>.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

The text of any modified regulation, unless the modification is only nonsubstantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation. The changes will be clearly indicated. A request for a copy of any modified regulation should be addressed to the contact person designated below. The Director will accept written comments on the modified regulation for 15 days after the date on which they are made available. The Director may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

#### ALTERNATIVES CONSIDERED

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the above action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the comment period.

#### FISCAL IMPACT

- Cost or savings to any state agency: None.
- Cost to any local agency or school district for which Cal. Gov't Code section 17500-17630 requires reimbursement: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.
- Costs or savings in federal funding to the state: None.
- Effect on housing costs: None.

#### DETERMINATIONS

The Director has determined that the proposed regulatory action:

- Has no economic impact on small businesses. Health care service plans are not a small business under Cal. Gov't Code section 11342.610.

- Does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Cal. Gov't Code section 17500 *et seq.*
- In his *initial* determination and pursuant to Cal. Gov't Code 11346.5(a)(8), this regulation will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- "The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action."
- Per Cal. Gov't Code section 11346.5(a)(10), does not significantly affect:
  - o The creation of jobs in California;
  - o The elimination of jobs in California;
  - o The creation of new businesses in California;
  - o The elimination of existing business in California;
  - o The expansion of existing businesses in California.

#### **CONTACT PERSON**

Comments, inquiries and substantive questions concerning this proposed regulation may be directed to CURTIS LEAVITT, Assistant Chief Counsel, or to the backup comment person, LYN AMOR MACARAEG, Regulations Coordinator, Department of Managed Health Care, Office of Legal Services, 980 Ninth Street, Suite 500, Sacramento, California 95814, (916) 322-6727.

## **TITLE 28. DEPARTMENT OF MANAGED HEALTH CARE**

### **NOTICE OF INTENT TO ADOPT REGULATIONS REGARDING MENTAL HEALTH PARITY**

#### **NOTICE IS HEREBY GIVEN**

The Director of the Department of Managed Health Care (Director), pursuant to the rulemaking authority granted by section 1344 of the Health and Safety Code, proposes to implement, interpret and make specific section 1374.72 of the Health and Safety Code, relating to mental health parity. The proposed regulations are contained in the California Code of Regulations, Title 28, section 1300.74.72.

#### **PUBLIC HEARING**

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to section 11346.8(a) of the Government Code. The

request for hearing must be received in writing by the Department of Managed Health Care (Department) contact person designated below no later than 15 days prior to the close of the written comment period.

#### **WRITTEN COMMENT PERIOD/ CONTACT PERSON**

Notice is also given that any interested person may present statements or arguments relevant to the proposed action by a written communication addressed to, and received by, the Department's contact person identified below on or before 5 p.m. on September 30, 2002. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day. Written communications may also be sent to Lyn Amor Macaraeg via electronic mail at [lmacaraeg@dmhc.ca.gov](mailto:lmacaraeg@dmhc.ca.gov) or via facsimile at (916) 324-6459. All comments, including facsimile and e-mail transmissions, should include the author's name and mailing address to enable the Department to provide future notices of proposed changes to the regulatory text.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Director licenses and regulates health care service plans under the Knox-Keene Health Care Service Plan Act of 1975 ("Act"), Chapter 2.2 (commencing with section 1340) of Division 2 of the Health and Safety Code.

Health and Safety Code section 1374.72 became effective on July 1, 2000, requiring every health care plan providing hospital, medical or surgical coverage to provide parity for medically necessary services for the treatment of severe mental illnesses and emotional disturbances of children. Health and Safety Code section 1344 mandates that the Director have the ability to adopt, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter, including defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of the Act.

Except as required by Health and Safety Code section 1374.72, health care service plans may exclude coverage for mental health services. Since the passage of section 1374.72, ambiguities regarding the requirements set forth in the statute have been identified. Regulation section 1300.74.72 addresses these ambiguities and makes clear the requirements of health plans relating to mental health parity.

Regulation section 1300.74.72 is necessary to clarify that all health care services including, but not limited to, basic health care services are required to diagnose, care and treat severe mental illnesses and emotional disturbances of children. In addition, this regulation requires that treatment for severe mental illnesses and emotional disturbances of children be

provided by mental health professionals licensed under Division 2 of the Healing Arts Provisions of the Business and Professions Code. Finally, the regulation provides that a diagnosis shall be made in accordance with generally accepted standards of mental health practice, as well as what is meant by pervasive developmental disorder and what constitutes a preliminary diagnosis.

The Director finds it necessary to adopt regulation section 1300.74.72 in order for the Department to ensure statutorily required mental health services intended to be provided through Health and Safety Code section 1374.72.

#### AUTHORITY

California Health & Safety Code section 1344.

#### REFERENCE

California Health & Safety Code sections 1374.72, 1345, 1367, and Business and Professions Code section 500 *et seq.*

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department has prepared and has available for public review the following documents:

1. An initial statement of reasons for the new and amended regulations;
2. Text of the legally effective regulations; and,
3. All information upon which this proposal is based (rulemaking file).

A copy of any or all of these items is available upon request by writing to the Department of Managed Health Care, ATTN: Ms. Lyn Amor Macaraeg, 980 9th Street, Suite 500, Sacramento, California 95814, which address will also be the location of public records, including reports, documentation, and other material related to this notice of proposed action. Additionally, a copy of the final statement of reasons (when prepared) will be available upon request by writing to the same address.

#### INTERNET AVAILABILITY

Materials regarding this notice of proposed action that are available via the Internet may be accessed at the following website:  
<http://www.dmh.ca.gov/library/regulations/pending>.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

The text of any modified regulation, unless the modification is only nonsubstantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation. The changes will be clearly indicated. A request for a copy of any modified regulation should

be addressed to the contact person designated below. The Director will accept written comments on the modified regulation for 15 days after the date on which they are made available. The Director may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

#### ALTERNATIVES CONSIDERED

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the comment period.

#### FISCAL IMPACT

- Cost or savings to any state agency: Although there will be additional expenditures of approximately \$0–5,000 in the current state fiscal year, it is anticipated that state agencies will be able to absorb these additional costs within their existing budgets and resources.
- Cost to any local agency or school district for which Cal. Gov't Code section 17500–17630 requires reimbursement: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.
- Costs or savings in federal funding to the state: None.
- Effect on housing costs: None.

#### DETERMINATIONS

The Director has determined that the proposed regulatory action:

- Has no economic impact on small businesses. Health care service plans are not a small business under Cal. Gov't Code section 11342.610.
- Does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Cal. Gov't Code section 17500 *et seq.*
- In his *initial* determination and pursuant to Cal. Gov't Code 11346.5(a)(8), this regulation will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

- “The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.”
- Per Cal. Gov’t Code section 11346.5(a)(10), does not significantly affect:
  - o The creation of jobs in California;
  - o The elimination of jobs in California;
  - o The creation of new businesses in California;
  - o The elimination of existing business in California;
  - o The expansion of existing businesses in California.

#### **CONTACT PERSON**

Comments or inquiries and substantive questions concerning this proposed regulation may be directed to CURTIS LEAVITT, Assistant Chief Counsel, or to the back up comment person, LYN AMOR MACARAEG, Department of Managed Health Care, Office of Legal Services, 980 Ninth Street, Suite 500, Sacramento, California 95814, (916) 322-6727.

### **TITLE 28. DEPARTMENT OF MANAGED HEALTH CARE**

#### **NOTICE OF INTENT TO ADOPT REGULATIONS REGARDING PETITION FOR RESTORATION**

##### **NOTICE IS HEREBY GIVEN**

The Director of the Department of Managed Health Care (Director), pursuant to the rulemaking authority granted by section 1344 of the Health and Safety Code, proposes to implement, interpret and make specific section 1389 of the Health and Safety Code by amending section 1300.89 in Title 28, California Code of Regulations (CCR) relating to procedures for plans petitioning the Department of Managed Health Care (Department) for restoration-reinstatement of a license after being barred from the industry.

##### **PUBLIC HEARING**

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to section 11346.8(a) of the Government Code. The request for hearing must be received in writing by the Department contact person designated below no later than 15 days prior to the close of the written comment period.

##### **WRITTEN COMMENT PERIOD/ CONTACT PERSON**

Notice is also given that any interested person may present statements or arguments relevant to the proposed action by a written communication ad-

ressed to, and received by, the Department’s contact person identified below on or before 5 p.m. on September 30, 2002. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day. Written communications may also be sent to Lyn Amor Macaraeg via electronic mail at [lmacaraeg@dmhc.ca.gov](mailto:lmacaraeg@dmhc.ca.gov) or via facsimile at (916) 324-6459. All comments, including facsimile and e-mail transmissions, should include the author’s name and mailing address to enable the Department to provide future notices of proposed changes to the regulatory text.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Director licenses and regulates health care service plans under the Knox-Keene Health Care Service Plan Act of 1975 (“Knox-Keene Act”), Chapter 2.2 (commencing with section 1340) of Division 2 of the Health and Safety Code. Pursuant to the Knox-Keene Act the Department proposes amendments to regulation section 1300.89 in Title 28 of the CCR to clarify and explain the procedures and requirements relating to plans petitioning the Department for restoration-reinstatement of a license after being barred from the industry.

California Health and Safety Code section 1344 vests the Director with the power to administer and enforce the provisions of the Knox-Keene Act. Furthermore, it mandates that the Director have the ability to adopt, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter, including rules governing applications and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of the Act. The Director may waive any requirement of any rule or form in situations where in the Director’s discretion such requirement is not necessary in the public interest or for the protection of the public, subscribers, enrollees, or persons or plans subject to this chapter.

The proposed amendments to section 1300.89 address necessary changes in the procedure for plans petitioning the Department for restoration-reinstatement of a license after being barred from the industry.

To implement existing law, this proposed action would amend the following regulation:

- Section 1300.89 is amended to add specific criteria that the Director will consider in evaluating a plan’s petition to the Department for restoration-reinstatement of a license.

The Legislature authorized the Director in Health and Safety Code section 1389 to require the submission of “additional” information and undertakings as a condition of granting a petition for reinstatement. The



proposed regulation specifies what information, at a minimum, the Director will consider in determining if the petition will be granted.

The additional information required will enable the Director to more fully assess the totality of the circumstances surrounding license suspension, including the actual administrative record applicable to the disciplinary proceedings, and information relating to the plan's previously denied petitions for restoration, if any.

Furthermore, a plan may submit any information relating to its rehabilitation of the situation that resulted in license suspension, which will allow the Director to weigh these factors when determining whether to grant reinstatement.

#### AUTHORITY

California Health & Safety Code section 1344.

#### REFERENCE

California Health & Safety Code section 1389.

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department has prepared and has available for public review the following documents:

1. An initial statement of reasons for the new and amended regulations;
2. Text of the legally effective regulations; and,
3. All information upon which this proposal is based (rulemaking file).

A copy of any or all of these items is available upon request by writing to the Department of Managed Health Care, ATTN: Ms. Lyn Amor Macaraeg, 980 9th Street, Suite 500, Sacramento, California 95814, which address will also be the location of public records, including reports, documentation, and other material related to this notice of proposed action. Additionally, a copy of the final statement of reasons (when prepared) will be available upon request by writing to the same address.

#### INTERNET AVAILABILITY

Materials regarding this notice of proposed action that are available via the Internet may be accessed at the following website:  
<http://www.dmhca.ca.gov/library/regulations/pending>.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

The text of any modified regulation, unless the modification is only nonsubstantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation. The changes will be clearly indicated. A request for a copy of any modified regulation should

be addressed to the contact person designated below. The Director will accept written comments on the modified regulation for 15 days after the date on which they are made available. The Director may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

#### ALTERNATIVES CONSIDERED

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the comment period.

#### FISCAL IMPACT

- Cost or savings to any state agency: None
- Cost to any local agency or school district for which Cal. Gov't Code section 17500-17630 requires reimbursement: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.
- Costs or savings in federal funding to the state: None.
- Effect on housing costs: None.

#### DETERMINATIONS

The Director has determined that the proposed regulatory action:

- Has no economic impact on small businesses. Health care service plans are not a small business under Cal. Gov't Code section 11342.610.
- Does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Cal. Gov't Code section 17500 *et seq.*
- In his *initial* determination and pursuant to Cal. Gov't Code section 11346.5(a)(8), the regulation will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- "The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action."

- Per Cal. Gov't Code section 11346.5(a)(10), does not significantly affect:
  - o The creation of jobs in California;
  - o The elimination of jobs in California;
  - o The creation of new businesses in California;
  - o The elimination of existing business in California;
  - o The expansion of existing businesses in California.

#### CONTACT PERSON

Comments, inquiries and substantive questions concerning this proposed regulation may be directed to CURTIS LEAVITT, Assistant Chief Counsel, or to the back up comment person, LYN AMOR MACARAEG, Department of Managed Health Care, Office of Legal Services, 980 Ninth Street, Suite 500, Sacramento, California 95814, (916) 322-6727.

## SUMMARY OF REGULATORY ACTIONS

### REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

#### BALDWIN HILLS CONSERVANCY Conflict of Interest

This is a Conflict of Interest Code filing that has been approved by the Fair Political Practices Commission and is being submitted for filing with the Secretary of State and printing in the California Code of Regulations only.

Title 2  
California Code of Regulations  
ADOPT: 59000  
Filed 08/07/02  
Effective 09/06/02  
Agency Contact:  
John A. Saurenman (213) 897-2702

#### BOARD OF OCCUPATIONAL THERAPY Citations: Issue, Assess, Appeal & Compliance

This rulemaking action implements the Business and Professions Code provisions allowing professional boards to issue citations with fines or orders of abatement.

Title 16  
California Code of Regulations  
ADOPT: 4140, 4141, 4142, 4143  
Filed 08/07/02  
Effective 09/06/02  
Agency Contact: Jeff Hanson (916) 322-3394

#### BUREAU OF AUTOMOTIVE REPAIR Grounds for Disciplinary Action

This rulemaking would clarify that under two recent statutes (1) knowingly installing, distributing, or selling previously deployed air bags, and (2) paying or taking fees for sending tow trucks to particular auto repair businesses may be the subject of disciplinary as well as criminal sanctions.

Title 16  
California Code of Regulations  
ADOPT: 3367, 3368  
Filed 08/01/02  
Effective 08/31/02  
Agency Contact: James Allen (916) 255-4300

#### COURT REPORTERS BOARD OF CALIFORNIA Minimum Transcript Format Standards

This action clarifies minimum format standards set in 1999 for official court transcripts.

Title 16  
California Code of Regulations  
AMEND: 2473  
Filed 07/31/02  
Effective 08/30/02  
Agency Contact: Gail S. Jones (916) 263-4690

#### DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS Combined DUI Regulations

The proposed regulatory action modifies provisions governing Driving-Under-the-Influence (DUI) programs.

Title 9  
California Code of Regulations  
ADOPT: 9851, 9874 AMEND: 9800, 9846, 9852, 9854, 9856, 9858, 9867, 9876, 9884, 9886 REPEAL: 9857  
Filed 07/31/02  
Effective 08/30/02  
Agency Contact: Mary Conway (916) 327-4742

#### DEPARTMENT OF CORPORATIONS Franchise Investment Law; Out of State Sales

The proposed regulatory action repeals provisions governing the sale of out-of-state franchises.

Title 10  
California Code of Regulations  
REPEAL: 310.100.1

Filed 08/05/02  
 Effective 09/04/02  
 Agency Contact: Kathy Womack (916) 322-3553

**DEPARTMENT OF HEALTH SERVICES**

**Safe Drinking Water Project Funding**

The regulatory action deals with Safe Drinking Water Project Funding. (State Department of Health Services File R-46-00.)

Title 22  
 California Code of Regulations  
 ADOPT: 63000.17, 63000.47, 63000.66, 63000.70, 63000.81, 63000.84, 63000.85, 63000.86, 63000.87, 63000.88, 63015, 63058 AMEND: 63000.19, 63000.37( and renumbered to 63000.67), 63000.40, 63000.43, 63000.62, 63000.86 (and renumbered to 63000.89), 63000.89  
 Filed 08/06/02  
 Effective 09/05/02  
 Agency Contact:  
 Charles E. Smith (916) 657-0730

**DEPARTMENT OF SOCIAL SERVICES**

**Cal WORKs 180- Day Family Reunification Extension**

Assembly Bill No 429, Chapter 111, Statutes of 2001, made changes to Welfare and Institutions Code section 11203 as it pertains to the temporary absence of CalWORKs Assistance Unit members. The revisions permit the parents of children who have been removed from the home and receiving out-of-home care to continue to receive CalWORKs funded services, such as abuse and mental health services, if the county determines such services are necessary for family reunification. This emergency regulatory action implements changes made by Assembly Bill No. 429 and is deemed an emergency, effective for 180 days, and is exempt from review by the Office of Administrative Law (Stats. 2001, ch. 111, section 60(b).)

Title MPP  
 California Code of Regulations  
 AMEND: 40-181.1(e); 42-710.6; 42-711.5, .6, &.8,42-721.1&.4;44-314.1&.2;80-301(r); and 82-812.6  
 Filed 08/01/02  
 Effective 08/01/02  
 Agency Contact:  
 Anthony J. Velasquez (916) 657-2586

**DEPARTMENT OF SOCIAL SERVICES**

**RCFE Staff Training**

This action implements Health and Safety Code section 1569.625 (SB 1670, c. 1169, Stats. 1992) which requires specified training for persons working in Residential Care Facilities for the Elderly (RCFE's).

Title 22, MPP  
 California Code of Regulations  
 AMEND: 87101, 87565, 87566, 87568, 87589  
 Filed 08/01/02  
 Effective 08/31/02  
 Agency Contact:  
 Anthony J. Velasquez (916) 657-2586

**DEPARTMENT OF SOCIAL SERVICES**

**AB 1692 CalWORKs Amendments**

In this regulatory action, the California Department of Social Services amends regulations pertaining to the Welfare-to-Work Program under CalWORKs. Principally, the amendments implement statutory changes contained in AB 1692, Chapter 652, Statutes of 2001, relating to United States Department of Labor grant program community service and work experience activities.

Title MPP  
 California Code of Regulations  
 AMEND: 42-701.2(w), 42-710.1, 42-710.2, 42-710.3, 42-711.522(c)(1), 42-711.544, 42-711.91, 42-711.931, 42-711.941, 42-712.441(a), 42-718.21, 42-719.11, 42-719.111, 42-719.2, 42-719.3, 42-721.511(d)  
 Filed 08/01/02  
 Effective 08/01/02  
 Agency Contact:  
 Anthony J. Velasquez (916) 657-2586

**DEPARTMENT OF SOCIAL SERVICES**

**Child Care Provider Notification**

This emergency regulatory action requires child Care providers to notify parents if an employee has a criminal record exemption.

Title 22, MPP  
 California Code of Regulations  
 AMEND: 101218.1, 102419, 102421  
 Filed 08/07/02  
 Effective 08/07/02  
 Agency Contact:  
 Anthony J. Velasquez (916) 657-2586

**DEPARTMENT OF SOCIAL SERVICES**

**Noncitizen Eligibility Certification Provision Amendments**

This Certificate of Compliance amends provisions dealing with Food Stamps and noncitizens. (Previous OAL file # 02-0220-03E)

Title MPP  
 California Code of Regulations  
 AMEND: 63-102, 63-103, 63-300, 63-301, 63-503  
 Filed 08/06/02  
 Effective 08/06/02  
 Agency Contact:  
 Anthony J. Velasquez (916) 657-2586



**DEPARTMENT OF TOXIC SUBSTANCES  
CONTROL  
Clean Loan Programs**

This action is the certification of compliance for the formal adoption of the regulations of the Cleanup Loans and Environmental Assistance to Neighborhoods program.

Title 22  
California Code of Regulations  
AMEND: 68200, 68201, 68202, 68203, 68204,  
68205, 68206, 68207, 68208, 68209, 68210, 68211,  
68212, 68213, 68214  
Filed 08/05/02  
Effective 08/05/02  
Agency Contact: Joan Ferber (916) 322-6409

**DEPARTMENT OF TOXIC SUBSTANCES  
CONTROL  
Manifest Discrepancies**

In light of terrorist threats, this readopted emergency regulation implements more stringent requirements for reporting discrepancies between manifests and actual deliveries of hazardous wastes for certain federally defined and classified explosives and poisonous materials.

Title 22  
California Code of Regulations  
AMEND: 66262.54, 66264.71, 66264.72,  
66265.71, 66265.72, 66270.30, Appendix  
Filed 08/01/02  
Effective 08/01/02  
Agency Contact: Joan Ferber (916) 322-6409

**DEPARTMENT OF TOXIC SUBSTANCES  
CONTROL  
Cathode Ray Tubes**

This rulemaking action readopts the emergency regulations that conditionally exempt cathode ray tube material from its current classification as hazardous waste provided the material is managed in compliance with the streamlined management requirements established by this rulemaking action, which correspond to federal management requirements for "universal waste."

Title 22  
California Code of Regulations  
ADOPT: 66273.6, 66273.80, 66273.81, 66273.82,  
66273.83, 66273.84, 66273.85, 66273.86,  
66273.87, 66273.68, 66273.69, 66273.90 AMEND:  
66271.9, 66273.1, 66273.8, 66273.9  
Filed 08/06/02  
Effective 08/06/02  
Agency Contact: Joan Ferber (916) 322-6409

**FAIR POLITICAL PRACTICES COMMISSION  
Advertising Disclosure**

The Fair Political Practices Commission is adopting section 18450.1 of title 2 of the California Code of Regulations, pertaining to Proposition 34—advertisement disclosure.

Title 2  
California Code of Regulations  
ADOPT: 18450.1  
Filed 07/31/02  
Effective 07/31/02  
Agency Contact: Robert Tribe (916) 322-5660

**FISH AND GAME COMMISSION  
Shiner Perch Take or Possess; Transport of Surfperch**

This Certificate of Compliance exempts shiner surfperch from the closing date of the season for all other surfperch. (Previous OAL file # 02-0321-03E)

Title 14  
California Code of Regulations  
AMEND: 28.59  
Filed 08/06/02  
Effective 08/06/02  
Agency Contact: John M. Duffy (916) 653-4899

**FISH AND GAME COMMISSION  
White Seabass Fishery Management Plan**

This regulatory action adds a new Chapter 5.5 entitled Fishery Management Plans to title 14. Article 1 of Chapter 5.5 is composed of regulations that apply to fishery management plans in general while Article 2 contains regulations specifically applying to the White Seabass Fishery Management Plan (WSFMP).

Title 14  
California Code of Regulations  
ADOPT: 50.00, 50.01, 50.02, 50.03, 51.00, 51.01,  
51.02, 51.04, 51.05, 155.01, 155.05, 155.10  
AMEND: 109  
Filed 07/31/02  
Effective 08/30/02  
Agency Contact: John M. Duffy (916) 653-4899

**OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD  
General Sanitation Requirements for Mold**

In this regulatory action, the Occupational Safety and Health Standards Board amends a regulation pertaining to general sanitation requirements for places of employment. The amendment requires that when exterior water intrusion, leakage from interior water sources, and other uncontrolled accumulation of water occurs, the intrusion, leakage or accumulation shall be corrected because of the potential for these conditions to cause the growth of mold.

Title 8  
California Code of Regulations  
AMEND: 3362

Filed 08/05/02  
 Effective 09/04/02  
 Agency Contact: Marley Hart (916) 274-5721

**OCCUPATIONAL SAFETY AND HEALTH  
 STANDARDS BOARD**

Oxygen or Fuel-Gas Operator Training and  
 Instructions

This regulatory action requires that employees in  
 charge of oxygen or fuel-gas supply equipment shall  
 be trained in accordance with Section 3203 of the  
 General Industry Safety Orders.

Title 8  
 California Code of Regulations  
 AMEND: 4799  
 Filed 07/31/02  
 Effective 08/30/02  
 Agency Contact: Marley Hart (916) 274-5721

**SCHOLARSHARE INVESTMENT BOARD**  
 Golden State Scholarshare Trust Program

This emergency regulatory action amends the  
 Golden State Scholarshare College Savings Program  
 to conform to recent changes in the Internal Revenue  
 Code. (Previous OAL file #01-1211-03E)

Title 5  
 California Code of Regulations  
 AMEND: 30950, 30951.1, 30952, 30953, 30954,  
 30955, 30956, 30957, 30958, 30959  
 Filed 07/31/02  
 Effective 07/31/02  
 Agency Contact:  
 Senita Robinson (916) 651-6381

**CCR CHANGES FILED WITH THE  
 SECRETARY OF STATE  
 WITHIN APRIL 03, 2002  
 TO AUGUST 07, 2002**

All regulatory actions filed by OAL during this  
 period are listed below by California Code of  
 Regulation's titles, then by date filed with the  
 Secretary of State, with the Manual of Policies and  
 Procedures changes adopted by the Department of  
 Social Services listed last. For further information on  
 a particular file, contact the person listed in the  
 Summary of Regulatory Actions section of the Notice  
 Register published on the first Friday more than nine  
 days after the date filed.

**Title 2**

08/07/02 ADOPT: 59000  
 07/31/02 ADOPT: 18450.1  
 07/25/02 AMEND: 2970  
 07/11/02 AMEND: 18707.4  
 07/11/02 ADOPT: 1859.200, 1859.201, 1859.202,  
 1859.203, 1859.204, 1859.205, 1859.206,

1859.207, 1859.208, 1859.209, 1859.210,  
 1859.211, 1859.212, 1859.213, 1859.214,  
 1859.215, 1859.216, 1859.217, 1859.218,  
 1859.219, 1859.220  
 07/11/02 AMEND: 554.6  
 06/27/02 ADOPT: 18450.3, 18450.4, 18450.5  
 AMEND: 18402  
 06/27/02 ADOPT: 2351  
 06/25/02 AMEND: 1189.10  
 06/20/02 AMEND: 561.2, 561.3  
 06/20/02 REPEAL: 548.96  
 06/17/02 AMEND: 18239, 18615, 18616  
 06/06/02 ADOPT: 18572  
 05/28/02 ADOPT: 1896.300, 1896.310, 1896.320,  
 1896.330, 1896.340, 1896.350, 1896.360,  
 1896.370  
 05/22/02 AMEND: 571(a)(5)  
 05/13/02 AMEND: 18428  
 05/10/02 AMEND: 18351  
 05/09/02 AMEND: 20202, 20206, 20210, 20224,  
 20234, 20298, 20350, 20363, 20910  
 REPEAL: 20106, 20205, 20213  
 05/02/02 ADOPT: 1859.104.1, 1859.104.2,  
 1859.104.3 AMEND: 1859.2, 1859.21,  
 1859.50, 1859.51, 1859.61, 1859.70,  
 1859.73.1, 1859.73.2, 1859.74.1,  
 1859.75.1, 1859.76, 1859.78.2,  
 1859.79.3, 1859.81, 1859.81.1, 1859.82,  
 1859.91, 1859.95, 1859.100, 1859.101,  
 1859.102,  
 04/26/02 ADOPT: 18520 AMEND: 18521, 18523,  
 18523.1  
 04/19/02 ADOPT: 18537.1  
 04/10/02 ADOPT: 1859.74.4 AMEND: 1859.2,  
 1859.20, 1859.21, 1859.30, 1859.33,  
 1859.40, 1859.41, 1859.42, 1859.43,  
 1859.50, 1859.51, 1859.60, 1859.70,  
 1859.73.1, 1859.73.2, 1859.74.1,  
 1859.74.4, 1859.75.1, 1859.76,  
 1859.78.2, 1859.79.3, 1859.81,  
 1859.81.1, 1859.  
 04/04/02 ADOPT: 60, 60.1, 60.2, 60.3, 60.4, 60.5,  
 60.6, 60.7, 60.8, 60.9, 60.10

**Title 3**

07/25/02 AMEND: 3423(b)  
 07/23/02 ADOPT: 7015  
 07/18/02 AMEND: 6000, 6710  
 07/11/02 AMEND: 3700(b)  
 07/03/02 AMEND: 1392.1, 1392.2, 1392.4,  
 1392.9.1  
 07/01/02 ADOPT: 1180.3.1, 1180.3.2 AMEND:  
 300(c)  
 06/20/02 REPEAL: 3431, 3591.17  
 06/13/02 AMEND: 2303(t)  
 06/13/02 ADOPT: 1366  
 06/11/02 AMEND: 3425(b)

06/10/02 AMEND: 3406(b)  
 06/10/02 AMEND: 6391, 6393, 6394, 6395  
 06/04/02 AMEND: 3591.16(a)  
 05/29/02 AMEND: 1380.19, 1436.38, 1446.7, 1454.14, 1462.15  
 05/16/02 AMEND: 1428.12, 1428.16  
 05/02/02 AMEND: 3700(a), (b), & (c)  
 04/23/02 AMEND: 3591.12(a)  
 04/23/02 ADOPT: 899.2 AMEND: 899.1  
 04/18/02 AMEND: 6510, 6793  
 04/12/02 AMEND: 3423(b)  
 04/11/02 ADOPT: 3664, 3665, 3666, 3667, 3668, 3669  
 04/11/02 ADOPT: 3664, 3665, 3666, 3667, 3668, 3669  
 04/08/02 AMEND: 6450.2, 6450.3, 6784  
 04/04/02 AMEND: 3033.2, 3033.3, 3033.4

**Title 4**

07/30/02 AMEND: 2050  
 07/08/02 AMEND: 2049  
 07/01/02 ADOPT: 12100, 12102, 12104, 12106, 12108, 12110, 12120, 12130  
 05/13/02 ADOPT: 8110, 8111, 8112, 8113, 8114, 8115, 8116, 8117, 8118, 8119, 8120, 8121, 8122, 8123, 8124, 8125  
 05/07/02 ADOPT: 3005, 3006, 3007, 3008, 3009, 3010 AMEND: 1928  
 04/16/02 AMEND: 1405, 1527

**Title 5**

07/31/02 AMEND: 30950, 30951.1, 30952, 30953, 30954, 30955, 30956, 30957, 30958, 30959  
 07/30/02 ADOPT: 11969.1, 11969.2, 11969.3, 11969.4, 11969.5, 11969.6, 11969.7, 11969.8, 11969.9  
 07/29/02 AMEND: 3051.16, 3065  
 07/15/02 AMEND: 80105, 80109, 80110, 80111, 80112, 80113, 80114, and 80115  
 06/28/02 ADOPT: 11983.5  
 06/11/02 AMEND: 11530, 11531  
 06/05/02 AMEND: 59311, 59328, 59342  
 05/21/02 AMEND: 80026.4, 80026.6, 80122  
 05/20/02 ADOPT: 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219 AMEND: 55316.5, 58003.1, 58003.3, 58007, 58009, 58051, 58056 REPEAL: 55317, 55352, 55370, 55372, 55374, 55376, 55378, 55380  
 05/08/02 ADOPT: 80434 AMEND: 80001  
 05/03/02 ADOPT: 54045.5, 58003.6

**Title 7**

04/04/02 ADOPT: 237

**Title 8**

08/05/02 AMEND: 3362  
 07/31/02 AMEND: 4799

07/30/02 ADOPT: 290.0, 290.1, 291.0, 291.1, 291.2, 291.3, 291.4, 291.5, 292.0, 293.0, 294.0, 295.0  
 07/11/02 AMEND: 3241(a)  
 07/01/02 ADOPT: 417.5 AMEND: 406, 411.1, 415, 417.3 REPEAL: 411.2, 411.3, 411.4  
 06/20/02 AMEND: 3700, 3702  
 06/18/02 AMEND: 5189  
 06/12/02 AMEND: 9791.1, 9792.5, 9793, 9795  
 06/03/02 AMEND: 4885  
 06/03/02 AMEND: 5034(f)  
 05/28/02 AMEND: 3650, 3664  
 05/20/02 AMEND: 32125, 32130, 32140, 32603, 32604, 32720, 32735, 32738, 32739, 32744, 32752, 32763, 32980  
 05/07/02 ADOPT: 11080, 11090, 11100, 11110, 11120, 11130, 11150 REPEAL: 11080, 11090, 11100, 11130, 11130, 11150  
 05/06/02 AMEND: 3089  
 05/02/02 AMEND: 100, 106, 107  
 05/01/02 ADOPT: 1716.2 AMEND: 1632, 1635, 1671, 1709, 1710  
 05/01/02 ADOPT: 11140 AMEND: 11140  
 04/22/02 AMEND: 2320.2 of the Low voltage Electrical safety orders  
 04/03/02 AMEND: 1626

**Title 8, 24**

05/08/02 AMEND: 3011(d), 3120.1 and 3122.0

**Title 9**

07/31/02 ADOPT: 9851, 9874 AMEND: 9800, 9846, 9852, 9854, 9856, 9858, 9867, 9876, 9884, 9886 REPEAL: 9857  
 06/28/02 ADOPT: 9526, 9531 AMEND: 9500, 9505, 9515, 9530, 9535

**Title 10**

08/05/02 REPEAL: 310.100.1  
 07/10/02 ADOPT: 1422, 1423  
 07/02/02 AMEND: 6070  
 06/24/02 ADOPT: 2698.68  
 06/20/02 ADOPT: 2729.5, 2790.6, 2846.1 AMEND: 2790.1, 2791.8, 2792, 2800, 2810, 2811, 2910, 2911, 2912, 2930  
 06/20/02 AMEND: 2498.6  
 06/17/02 ADOPT: 2193, 2193.1, 2193.2, 2193.3  
 06/07/02 AMEND: 5.2001 and Appendix  
 06/06/02 AMEND: 2698.70, 2698.71 REPEAL: 01-1219-06 E  
 06/03/02 ADOPT: 2192.1, 2192.2, 2192.3, 2192.4, 2192.5, 2192.6, 2192.7, 2192.8, 2192.9, 2192.10, 2192.11, 2192.12, 2192.13  
 06/03/02 ADOPT: 2187.3 AMEND: 2186.1, 2187.1, 2187.2  
 05/01/02 ADOPT: 2278, 2278.1, 2278.2, 2278.3, 2278.4, 2278.5



04/29/02 ADOPT: 2699.6606, 2699.6711,  
2699.6631, 2699.6631, 2699.6717  
AMEND: 2699.6500, 2699.6600,  
2699.6605, 2699.6607, 2699.6611,  
2699.6613, 2699.6617, 2699.6623,  
2699.6625, 2699.6629, 2699.6700,  
2699.6703, 2699.6705, 2699.6709,  
2699.6800, 2699.6801, 2699.6809  
04/29/02 ADOPT: 1729, 1741.5, 1950.302  
AMEND: 1741.5  
04/16/02 AMEND: 2698.73

**Title 11**

07/02/02 ADOPT: 410, 411, 415, 416, 417, 418,  
419, 419.1, 419.2, 419.3, 420, 421, 422,  
423, 424, 425, 426 REPEAL: 410, 411,  
415, 416 417, 418, 419, 420, 421, 422,  
423, 424, 425, 426  
07/01/02 AMEND: 1081  
06/27/02 AMEND: 987.1  
06/19/02 ADOPT: 999.10, 999.11, 999.12, 999.13,  
999.14, Appendix A  
05/24/02 AMEND: 1005  
05/21/02 AMEND: 1005  
05/06/02 ADOPT: 435, 436, 437, 438, 439, 440,  
441, 442, 443, 444, 445, 446, 447, 448,  
449, 450, 451, 452, 453, 454, 455, 456,  
457, 458, 459, 460, 461, 462 463, 464,  
465, 466, 467, 468, 469, 470, 471, 472,  
473, 474, 475, 476, 477, 478, 479, 480,  
481, 482, 483, 48  
04/26/02 AMEND: 1005, 1008  
04/25/02 ADOPT: 1081(a)(32)  
04/23/02 AMEND: 3000. 3001, 3003, 3007, 3008  
04/22/02 AMEND: 900, 901, 902, 903, 904, 905,  
906, 907, 908, 911  
04/15/02 ADOPT: 999.10, 999.11, 999.12, 999.13,  
999.14 and Appendix A

**Title 13**

07/25/02 AMEND: 422.01  
07/22/02 ADOPT: 2444.2 AMEND: 2111, 2112,  
2139, 2140, 2147, 2440, 2441, 2442,  
2443.1, 2443.2, 2443.3, 2444, 2445.1,  
2445.2, 2446  
07/10/02 AMEND: 1213.1, 1230, 1239  
07/05/02 ADOPT: 225.00, 225.03, 225.06, 225.09,  
225.12, 225.15, 225.18, 225.21, 225.24,  
225.27, 225.30, 225.33, 225.36, 225.39,  
225.42, 225.45, 225.48, 225.51, 225.54,  
225.57, 225.60, 225.63, 225.66, 225.69,  
225.72  
06/24/02 ADOPT: 1962.1 AMEND: 1900, 1962  
06/24/02 AMEND: 1270  
06/18/02 AMEND: 1  
06/03/02 AMEND: 565  
05/24/02 AMEND: 1900, 1960.1 (k), 1961, 1962 &  
the Incorporated Test Procedure

04/29/02 AMEND: 350.44  
04/04/02 ADOPT: 565

**Title 14**

08/06/02 AMEND: 28.59  
07/31/02 ADOPT: 50.00, 50.01, 50.02, 50.03,  
51.00, 51.01, 51.02, 51.04, 51.05, 155.01,  
155.05, 155.10 AMEND: 109  
07/25/02 ADOPT: 18085, 18086, 18087, 18088  
AMEND: 18011, 18056  
07/25/02 AMEND: 791.7; Forms FG OSPR-1925,  
FG OSPR-1947, and FG OSPR-1972.  
07/17/02 AMEND: 2090, 2105, 2420, 2425, 2530,  
2690 renumbered to 2850  
07/15/02 ADOPT: 916.13, 936.13, 956.13,  
916.13.1, 936.13.1, 956.13.1, 916.13.2,  
936.13.2, 956.13.2, 916.13.3, 936.13.3,  
956.13.3, 916.13.4, 936.13.4, 956.13.4,  
916.13.5, 936.13.5, 956.13.5, 916.13.6,  
936.13.6, 956.13.6, 916.13.7, 936.13.7,  
956.13.7, 916.13.8, 936  
07/12/02 AMEND: 895.1, 898, 914.8, 934.8,  
954.8, 916, 936, 956, 916.2, 936.2, 956.2,  
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956.11, 916.12, 936.12, 956.12, 923.3,  
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06/28/02 ADOPT: 708 AMEND: 265, 308, 360,  
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06/27/02 ADOPT: 4971  
06/25/02 AMEND: 7.50  
06/24/02 AMEND: 791, 791.5, 791.7, 792, 793,  
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06/20/02 ADOPT: 17211, 17211.1, 17211.2,  
17211.3, 17211.4, 17211.5, 17211.6,  
17211.7, 17211.8, 17211.9  
06/19/02 AMEND: 2135  
06/19/02 AMEND: 2030  
06/18/02 AMEND: 11900  
06/13/02 ADOPT: 17402.5(c)(6), 17402.5(d)(3)  
AMEND: 17400, 17402, 17402.5  
06/06/02 ADOPT: 749.1  
06/05/02 AMEND: 1.1, 6159, 6170, 6170.5, 6171,  
6179, 6184, 6185, 6200, 6206, 6222,  
6243, 6254, 6255, 6262  
05/30/02 AMEND: 1104.1  
05/23/02 ADOPT: 52.10  
05/22/02 AMEND: 1037.4, 1092.19  
05/21/02 ADOPT: 17367, 17368, 17369, 17370.1,  
17370.2, 18225  
05/20/02 AMEND: 149  
04/29/02 AMEND: 27.80  
04/11/02 ADOPT: 104.1  
04/10/02 AMEND: 27.67  
04/10/02 AMEND: 17943(b)(26)  
04/04/02 AMEND: 670.2

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06/21/02 AMEND: 18104.8, 18105.9, 18105.10, 21140

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07/24/02 ADOPT: 3220.2, 3220.3 AMEND: 3220, 3220.1  
07/12/02 AMEND: 3000, 3454, 3456, 3457, 3458, 3459, 3460, 3462, 3463, 3464  
05/08/02 ADOPT: 4746.5  
05/06/02 AMEND: 3104  
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**Title 16**

08/07/02 ADOPT: 4140, 4141, 4142, 4143  
08/01/02 ADOPT: 3367, 3368  
07/31/02 AMEND: 2473  
07/30/02 AMEND: 1399.523  
07/26/02 AMEND: 3340.16, 3340.16.5, 3340.17, 3340.32, 3340.42, 3340.50 REPEAL: 3340.16.7  
07/17/02 AMEND: 1387.1  
07/03/02 AMEND: 3394.4 and 3394.6  
07/01/02 ADOPT: 638, 639, 640, 641  
06/12/02 ADOPT: 4, 9, 12, 12.5, 13, 14 AMEND: 6, 7, 9, 9.1, 10, 11.5, 37, 50  
06/03/02 AMEND: 2034, 2036  
05/29/02 ADOPT: 980.1 AMEND: 974  
05/28/02 AMEND: 3340.42  
05/24/02 ADOPT: 832.06 AMEND: 832.05  
05/21/02 AMEND: 2006  
05/21/02 ADOPT: 2412 AMEND: 2411, 2418  
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05/16/02 AMEND: 832.54  
05/08/02 AMEND: 832.09  
05/02/02 AMEND: 3303, 3353, 3361.1  
04/09/02 AMEND: 2010.1, 2024, 2025

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07/22/02 ADOPT: 93105  
07/17/02 ADOPT: 2638 AMEND: 2500, 2502, 2505, 2551, 2552, 2553, 2596, 2614, 2626  
06/28/02 AMEND: 6508  
06/10/02 AMEND: 90700, 90701, 90702, 90703, 90704, 90705 & to the tables in Section 90705  
05/16/02 AMEND: 6508  
05/02/02 ADOPT: 2641.5, 2641.10, 2641.15, 2641.20, 2641.25, 2641.30, 2641.35, 2641.45, 2641.50, 2641.55, 2641.60, 2641.65, 2641.70, 2641.75, 2641.77, 2641.80, 2641.85, 2641.90, 2643.5, 2643.10, 2643.15, 2643.20.  
04/22/02 AMEND: 70500, 70600  
04/11/02 AMEND: 58420

04/10/02 ADOPT: 54327.2 AMEND: 54302, 54327, 54327.1, 56002, 56026, 56093, 58651

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07/02/02 ADOPT: 1533.2  
06/11/02 ADOPT: 1123, 1124, 1161, 1178, 1435, 1436 AMEND: 1101, 1105, 1120, 1132, 1134, 1420, 1422, 1430 REPEAL: 1103, 1104, 1106, 1107, 1108, 1114, 1115, 1116, 1117, 1118, 1119, 1121, 1131, 1133, 1151, 1152, 1153, 1154, 1155, 1171, 1172, 1173, 1174, 1175, 1176  
06/11/02 AMEND: 21 REPEAL: 23, 24, 25, 26  
06/11/02 ADOPT: 255, 263, 264, 265 AMEND: 252, 254, 261, 304 REPEAL: 253, 256, 262  
06/07/02 ADOPT: 1525.7  
06/07/02 AMEND: 1533.1  
06/07/02 ADOPT: 1533  
06/06/02 ADOPT: 1507  
06/05/02 AMEND: 1111, 1122, 1137, 1177, 1413, 1470; section 1470 withdrawn from the instant filing.  
06/04/02 AMEND: 135  
05/29/02 AMEND: 23101.5  
05/20/02 ADOPT: 138  
05/16/02 ADOPT: 139  
05/15/02 AMEND: 1699  
05/14/02 AMEND: 1603  
05/14/02 AMEND: 905  
05/13/02 ADOPT: 4011 AMEND: 4061  
05/13/02 ADOPT: 1434  
04/17/02 ADOPT: 305.3  
04/16/02 AMEND: 1525.2  
04/16/02 AMEND: 1668  
04/16/02 AMEND: 1532  
04/03/02 ADOPT: 138  
04/03/02 AMEND: 25110

**Title 19**

05/22/02 ADOPT: 2000  
05/16/02 REPEAL: 596.15 & 596.16 & Article 12 thru Article 23

**Title 20**

06/03/02 ADOPT: 1342, 1343, 1344 AMEND: 1302, 1303, 1306, 1307, 1308, 1340, 1341, 2503, 2505, 2507 REPEAL: 1342, 1343, 1344, 1349

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08/06/02 ADOPT: 63000.17, 63000.47, 63000.66, 63000.70, 63000.81, 63000.84, 63000.85, 63000.86, 63000.87, 63000.88, 63015, 63058 AMEND: 63000.19, 63000.37 (and renumbered to 63000.67), 63000.40, 63000.43, 63000.62, 63000.86 (and renumbered to 63000.89), 63000.89

08/06/02 ADOPT: 66273.6, 66273.80, 66273.81, 66273.82, 66273.83, 66273.84, 66273.85, 66273.86, 66273.87, 66273.68, 66273.69, 66273.90 AMEND: 66271.9, 66273.1, 66273.8, 66273.9

08/05/02 AMEND: 68200, 68201, 68202, 68203, 68204, 68205, 68206, 68207, 68208, 68209, 68210, 68211, 68212, 68213, 68214

08/01/02 AMEND: 66262.54, 66264.71, 66264.72, 66265.71, 66265.72, 66270.30, Appendix

07/22/02 ADOPT: 111550

07/18/02 AMEND: 12705, 12805

07/16/02 AMEND: 51503, 51503.2, 51504, 51505.1, 51505.2, 51505.3, 51507, 51507.2, 51507.3, 51509, 51509.1, 51514, 51517, 51521, 51527, 51527, 51529, 51535.5

07/15/02 ADOPT: 64860

07/03/02 ADOPT: 66268.31.5 AMEND: 66261.32, 66261.33, Ch. 11 App. VII, Ch. 11 App. VIII, 66268.7, 66268.33, 66268.39.5, 66268.40 and table entitled "Treatment Standards for Hazardous Wastes, 66268.48, 66268.49, Ch. 18 App. VII.

06/19/02 ADOPT: 67900.1, 67900.2, 67900.3, 67900.4, 67900.5, 67900.6, 67900.7, 67900.8, 67900.9, 67900.10, 67900.11, 67900.12

06/10/02 ADOPT: 100178.1 AMEND: 100177, 100178

04/30/02 AMEND: 51515(c), 51515(e), 51518(b), 51521(1), 51527(b)

04/18/02 AMEND: 4304-12

04/16/02 AMEND: 4408, 4409, 4414

04/16/02 AMEND: 12000

04/11/02 AMEND: 66261.6

04/04/02 AMEND: 66270.69, 67800.1, 67800.5

04/04/02 AMEND: 66262.54, 66264.71, 66264.72, 66265.71, 66265.72, 66270.30, Appendix

04/04/02 ADOPT: 66270.42.5, 66271.20 AMEND: 66270.42, 66271.18, 66270.21

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08/07/02 AMEND: 101218.1, 102419, 102421

08/01/02 AMEND: 87101, 87565, 87566, 87568, 87589

07/24/02 ADOPT: 110000, 110042, 110046, 110088, 110099, 110109, 110129, 110135, 110147, 110148, 110150, 110164, 110182, 110184, 110186 110220, 110224, 110230, 110252, 110261, 110289, 110341, 110410, 110431, 110436, 110445, 110456, 110474, 110478,

07/23/02 ADOPT: 87227.1, 87583.1 AMEND: 80007(a), 87101(s), 87107(a), 87114,

87118(a), 87222(a), 87561(a)(1)(A), 87585(a), 87587, 87700, 87702, 87807(a), 87854(d)

06/26/02 ADOPT: 89202, 89261, 89319, 89323, 89370, 89372, 89374, 89376, 89388, 89400, 89405 AMEND: 87000, 87001, 87005, 87006, 87007, 87009, 97010, 97010.1, 87010.2, 87017, 87018, 87019, 87019.1, 87019.2, 87020, 87021, 87024, 87026, 87027, 87028, 87029, 87031

05/29/02 ADOPT: Title 22 section 119184 REPEAL: MPP section 12-225.3

05/02/02 ADOPT: 110411, 110625, 111110, 111120, 111210, 111220, 111230 REPEAL: MPP 12-000, 12-003, and Appendix I

04/08/02 ADOPT: 85081, 87593 AMEND: 85001, 87101

#### **Title 23**

07/30/02 AMEND: 2910

07/18/02 ADOPT: 3936

07/16/02 ADOPT: Publish new section 3935

06/07/02 ADOPT: 510, 511, 512, 513, 514, 515, 516, 517

05/23/02 ADOPT: 3962

05/03/02 AMEND: 3961

04/17/02 AMEND: Article 6, section 645

04/03/02 AMEND: 2712(e)

04/03/02 AMEND: 3954

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04/26/02 AMEND: 7060, 7062.1, 7078.2, 7078.4, 7078.5

#### **Title 27**

07/23/02 ADOPT: 10010(a), 10010(b), 10010(c), 10010(d) REPEAL: 10010

05/09/02 AMEND: 22200, 22228, 22233, 22248, Form CIWMB 106 (08/2001)

#### **Title 28**

07/17/02 ADOPT: 1300.67.05

07/08/02 REPEAL: 1300.75.4.2, 1300.75.4.4

04/24/02 ADOPT: 1300.41.8

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08/06/02 AMEND: 63-102, 63-103, 63-300, 63-301, 63-503

08/01/02 AMEND: 42-701.2(w), 42-710.1, 42-710.2, 42-710.3, 42-711.522(c)(1), 42-711.544, 42-711.91, 42-711.931, 42-711.941, 42-712.441(a), 42-718.21, 42-719.11, 42-719.111, 42-719.2, 42-719.3, 42-721.511(d)

08/01/02 AMEND: 40-181.1(e); 42-710.6; 42-711.5, 42-711.6, 42-711.8, 42-721.1, 42-724.4, 44-314.1, 44-314.2;80-301(r); and 82-812.6

07/26/02 AMEND: 63-402



07/24/02	ADOPT: 16-702	302.3, 44-133.8, 82-833	AMEND: 40-
07/22/02	ADOPT: 40-188.136, 40-188.16, 40-188.21	AMEND: 40.101.11, 40-188.11, 40-188.12, 40-188.13, 40-188.131, 40-188.132, 40-188.133, 40-188.137, 40-188.138, 40-188.15, 40-188.17, 40-188.22, 40-188.23, 40-188.24, 40-188.25, 40-190.22	107.14, 40-107.16, 40-107.17, 40-107.18, 40-107.19, 42-301.2, 44-133.51, 82-8
07/03/02	ADOPT: 69-209, 69-210	AMEND: 69-201, 69-202, 69-203, 69-204, 69-205, 69-206, 69-207, 69-208, 69-211, 69-212, 69-213, 69-214, 69-215, 69-216, 69-217, 69-301, 69-302, 69-303, 69-304, 69-205, 69-306	REPEAL: 69-210, 69-221
06/28/02	ADOPT: 40-107.141, 40-107.142, 40-107.143, 40-107.144, 40-107.15, 40-107.151, 40-107.152, 42-302.114, 42-302.114(a)-(c), 42-302.21(h)(1), 42-	302.3, 44-133.8, 82-833	AMEND: 40-
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05/09/02	ADOPT: 44-302	AMEND: 25-301, 25-302, 25-303, 25-304, 25-305, 25-306, 25-310.3, 25-330.9, 25-506, 44-304, 44-305, 44-325, 44-327, 80-310	
04/26/02	ADOPT: 16-001, 16-003, 16-005, 16-010, 16-015, 16-105, 16-120, 16-130, 16-201, 16-215, 16-301, 16-310, 16-315, 16-320, 16-325, 16-401, 16-410, 16-501, 16-505, 16-510, 16-515, 16-517, 16-520, 16-601, 16-610, 16-701, 16-750, 16-801	AMEND : 20-300, 44-302,	

